

08-1459

LOCALLY ASSESSED COMMERCIAL PROPERTY

TAX YEAR: 2007

SIGNED: 08-30-2011

COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN

PARTIAL CONCURRENCE & PARTIAL DISSENT: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 08-1459 Parcel No. #####-1 Tax Type: Property Tax / Locally Assessed Tax Year: 2007 Judge: Chapman
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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 regulation pursuant to 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 notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

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

Appearances:

For Petitioner: PETITIONER, Taxpayer
For Respondent: RESPONDENT REP. 1, RURAL COUNTY Assessor
RESPONDENT REP. 2, from RURAL COUNTY Assessor's Office
RESPONDENT REP. 3, RURAL COUNTY Clerk / Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 2, 2010.

Based upon the evidence and testimony presented at the hearing and on the post-hearing submissions, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The tax year at issue is 2007, with a lien date of January 1, 2007.
3. At issue are the fair market value, equalization, and residential exemption of a developed parcel of land that is 1.03 acres in size. The subject property is identified as Parcel No. #####-1.

ADDRESS in CITY 1, RURAL COUNTY, Utah. The Commission issued an Initial Hearing Order in this matter on October 21, 2009, and the taxpayer timely requested a Formal Hearing.

5. The RURAL COUNTY Board of Equalization (“County BOE”) sustained the \$\$\$\$ value at which the subject property was assessed for the 2007 tax year. The County asks the Commission to sustain the subject’s current value of \$\$\$\$\$, while the taxpayer asks the Commission to reduce the subject’s value to \$\$\$\$\$.

6. The County has only applied the 45% residential exemption to a portion of the subject property, as explained further in the decision. The County asks the Commission to sustain its partial application of the exemption. The taxpayer asks the Commission to find that the entire subject property qualifies for the exemption.

7. As of the lien date, the subject property was operated on a part-time basis as a bed and breakfast named the COMPANY 1. The taxpayer stated that the subject property operated as a bed and breakfast for no more than 22 weeks in 2006.

8. The subject property is located in a residential area zoned R-3, but the subject property has been granted a Conditional Use Variance to operate as a bed and breakfast.

9. Improvements on the 1.03-acre subject lot include three buildings, a swimming pool, a garage, and a carport. The improvements were built in or around 1957, except for the garage, which was built in 2006. The three buildings include:

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a. Building A, which is 2,622 square feet in size. This is a ranch-style house with a kitchen, three bedrooms, four baths, and a dining room. The County has included the swimming pool and hot tub in this building's value;

b. Building B, which is 779 square feet in size. This building has two bedrooms and two baths; and

c. Building C, which is 1,083 square feet in size. This building has a laundry room / office, a partial kitchen and sitting room, as well as a bedroom and bath. The County has included the garage and carport in this building's value.

10. The County's current value of \$\$\$\$\$ is based on a cost approach, with the County valuing 0.51 acres of the land as commercial land, 0.52 acres as residential land, and the improvements, as follows:

Land	0.51 acres as commercial land	\$\$\$\$\$	
	0.52 acres as residential land	<u>\$\$\$\$\$</u>	
	Total Land Value		\$\$\$\$\$
Improvements	Building A	\$\$\$\$\$	
	Building B	\$\$\$\$\$	
	Building C	<u>\$\$\$\$\$</u>	
	Total Improvements Value		<u>\$\$\$\$\$</u>
	TOTAL ASSESSED VALUE		\$\$\$\$\$

11. For the 0.51 acres of land the County valued as commercial land, it determined from its land guideline that it should be valued at \$\$\$\$\$ per square foot, which equates to \$\$\$\$\$.

12. For the 0.52 acres of land the County valued as residential land, the County determined from its land guideline that the first 0.25 acres of residential land should be valued at a base value of \$\$\$\$\$, with any remaining residential land valued at \$\$\$\$\$ per acre. The subject's remaining residential acreage (i.e., in excess of 0.25 acres) is 0.27 acres, which at \$\$\$\$\$ per acre, is \$\$\$\$\$. On this basis, the County valued the subject's 0.52 acres of residential land at \$\$\$\$\$ (\$\$\$\$\$ plus \$\$\$\$\$).

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13. The County determined the values for the improvements with Marshall & Swift cost data. This data results in the same value, whether the improvements are classified as residential or commercial.

14. The County determined that the 0.51 acres of land it valued as commercial property should not receive the primary residential exemption and that the 0.52 acres of land valued as residential property should receive the exemption. The County stated that it valued 50% of the 1.03-acre subject lot as residential land receiving the exemption and 50% as commercial land not receiving the exemption because the land associated with other bed and breakfast properties was valued on a similar basis.

15. The County determined that 24% the total improvements value of \$\$\$\$\$ should receive the primary residential exemption, which results in the County applying the primary residential exemption to \$\$\$\$\$ of the improvements value. The County determined that the remaining \$\$\$\$\$ of the improvements value should not receive the exemption. The County indicated that it determined its 24% improvements exemption rate by using the square footages of the three buildings and determining that the square footages associated with Buildings A and B would not qualify for the exemption, while the square footage associated with Building C would qualify for the exemption, as follows:

Building	Square Footage	
Building A	2,622	
Building B	779	
Building C	<u>1,083</u>	1,083 / 4,484 = 24.15%, which rounds to 24%
Total Sq. Ft.	4,484	

16. The taxpayer explained that prior to her purchasing the subject property, the previous owners lived in Building C and used the other buildings as the bed and breakfast. The County stated that it was also their understanding that Building C had been used as the prior owners' residence. The taxpayer, however, stated that since she purchased the subject property, she lives in all of the buildings on the property. She stated that she uses the bedrooms in all three structures, but uses the kitchen in Building A and stores her clothes in the closet in Building C.

Fair Market Value

17. The taxpayer's proposed fair market value of \$\$\$\$\$ is based on her estimate that she purchased the subject's real property for \$\$\$\$\$ in September 2004 and spent another \$\$\$\$\$ to add a three-car garage in 2006. Although the taxpayer paid \$\$\$\$\$ for the bed and breakfast in 2004, she attributed \$\$\$\$\$ of this price to the business, another \$\$\$\$\$ to personal property, and another \$\$\$\$\$ to reservations, which leaves \$\$\$\$\$ of the purchase price attributed to the real property. The 2004 sale, however, occurred more than two years prior to the lien date. Because of the length of time between the sale date and the 2007 lien date, the 2004 sales information is not convincing evidence of the subject's fair market value for 2007. In addition, the portions of the sales price attributed to the business and to the personal property are not supported by convincing evidence. Accordingly, the 2004 sales price of the subject property will receive little consideration in determining the subject's fair market value.

18. The County submitted six comparable sales and listings of bed and breakfast properties in AREA Utah. One of the comparables is the sale of the subject to the taxpayer, which the County has listed at a sales price of \$\$\$\$\$. The sale of the subject property at \$\$\$\$\$ is not a persuasive comparable because this sales price appears to include personal property and business value, which the County should have estimated and deducted to determine the sales price of the subject's real property. Two of the five remaining comparables are listings, which are given little consideration. The three remaining comparables are sales in CITY 2 and CITY 3, Utah for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. Two of the sales were in 2002 and 2003, while the other was in 2008. These properties appear to have fewer bedrooms to rent than the subject, and sold for a "price per room" ranging between \$\$\$\$\$ and \$\$\$\$\$. If a price per room ranging from \$\$\$\$\$ to \$\$\$\$\$ is applied to the subject's six bedrooms, the subject's adjusted sales price would range between \$\$\$\$\$ and \$\$\$\$\$, which would support the subject's current value. However, the three comparables are not clearly dispositive of the subject's fair market value for several reasons. First, it is unknown whether the

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comparables' sales prices included amounts for personal property and business value, which would need to be deducted. Second, there are no adjustments made to any of the comparables for location (particularly important for properties located in different cities) and for the time of sale, as well as adjustments for size, age, etc.

19. Neither party has provided income information for the subject property, which could be helpful in establishing the fair market value for the subject, which is used for commercial purposes.

20. The taxpayer presented no evidence to show that the Marshall & Swift cost data used by the County to value the subject's improvements was incorrect.

21. The County has currently valued the subject's 1.03-acre lot at \$\$\$\$\$, having placed a commercial value of \$\$\$\$\$ on 0.51 acres of the lot and a residential value of \$\$\$\$\$ on the remaining 0.52 acres of the lot. The taxpayer asks for the subject's 1.03-acre lot to be valued at \$\$\$\$\$. She stated that the County's newly established land values for 2007 call for the first 0.25 acres of residential land to be valued at \$\$\$\$\$ and for the remaining acreage to be valued at \$\$\$\$\$ per acre. If the subject's lot were valued entirely as residential land, she explains that its first 0.25 acres would be valued at \$\$\$\$\$ and its remaining 0.78 acres would be valued at \$\$\$\$\$ (\$\$\$\$\$ times 0.78 acres), for a total land value of \$\$\$\$\$. However, the subject property has received a zoning variance to operate as commercial property. Accordingly, it appears appropriate that the County valued a portion of the subject's land using commercial land values. It is also noted that the County used a similar approach when assessing other bed and breakfast properties in the County (i.e., the County determined that a portion of the land was used for commercial purposes and that a portion was used for residential purposes). For these reasons, the taxpayer's argument to reduce the fair market value of the subject's land to \$\$\$\$\$ is not convincing.

22. The taxpayer presented no evidence to show that the \$\$\$\$\$ square foot commercial land rate used by the County to value 50% of the subject lot as commercial land is too high.

23. For the 50% of the subject lot that the County valued as residential land, the County applied a base lot rate of \$\$\$\$ to the first 0.25 acres of residential land and \$\$\$\$ per acre to the remaining residential acreage. The taxpayer indicated that the rear of the property is approximately 0.42 acres in size and is a grass yard with no structures. The taxpayer also indicated that the current structures could not be segregated into more than one parcel. The County's approach to value the residential portion of the subject property's land appears to be reasonable. For a residential lot, it is common and appropriate to value the "base residential lot" at a higher unit value and the remaining residential land at a lower unit value. Based on the evidence submitted by the parties, it has not been shown that the County's methodology to estimate the fair market value of the subject's 0.52 acres of residential land is incorrect.

24. The evidence does not show that the subject's fair market value is lower than its current value of \$\$\$\$ or that the fair market values of the value components are less than the amounts described above.

Equalization

25. The taxpayer submitted evidence of residential properties in CITY 1 where property owners were running businesses out of their properties, such as businesses for general contracting, telephone sales, piano lessons, (X) tours, magician, repairs, sewing, beauty parlor, etc. Exhibit P-10. Most of the properties appear to have been valued as residential property only. However, most of these businesses do not appear, like bed and breakfast businesses, to be ones where the customers occupy a significant portion of the real property on a nightly basis. Accordingly, it does not appear unreasonable that a bed and breakfast is assessed as a commercial property. Furthermore, the County provided the 2007 assessments of five other properties assessed as bed and breakfasts in CITY 1 in 2007. All of these properties were assessed like the subject; i.e., a portion of their land was assessed as commercial land and a portion as residential land and a portion of each property received the residential exemption and a portion did not. It also appears the most, if not all, motels and nightly rental properties were assessed as commercial properties. For these reasons, the subject property

appears to have been assessed in a manner equitable with the assessment of other similar commercial properties. No inequity of assessment exists due to the subject being assessed partially as commercial property and partially as residential property.

26. *Commercial Land.* The subject’s 0.51 acres of commercial land is assessed at \$\$\$\$ per square foot. It was found earlier that the evidence was insufficient to show that the fair market value of the subject’s commercial land was lower than \$\$\$\$ per square foot. Nevertheless, evidence was submitted that raises the issue of whether the subject’s commercial land value should be reduced for equalization purposes. The parties submitted a number of comparables that show the values at which other parcels of commercial land in CITY 1 were assessed for 2007. Apparently, much of the commercial land in CITY 1 was “reassessed” in 2007 at higher prices. The County admits, however, that some commercial land was “missed” and was still assessed in 2007 at lower prices. The commercial land comparables show 2007 assessments, as follows:

Parcel Number	Type of Property	Acreage	Assessed Land Value	Assessed Value per Square Foot
Subject	Bed & Breakfast	0.52	\$\$\$\$	\$\$\$\$
#####-2	Nightly rentals	0.27	\$\$\$\$	\$\$\$\$
#####-3	Campground	1.66	\$\$\$\$	\$\$\$\$
#####-4	School	0.91	\$\$\$\$	\$\$\$\$
#####-5	Nightly rentals	0.28	\$\$\$\$	\$\$\$\$
#####-6	???	0.26	\$\$\$\$	\$\$\$\$
#####-7	Nightly rentals	0.21	\$\$\$\$	\$\$\$\$
#####-8	Motel	0.95	\$\$\$\$	\$\$\$\$
#####-9	Bed & Breakfast	0.90	\$\$\$\$	\$\$\$\$
#####-10	Bed & Breakfast	0.19	\$\$\$\$	\$\$\$\$
#####-11	Bed & Breakfast	0.49	\$\$\$\$	\$\$\$\$
#####-12	Bed & Breakfast	0.18	\$\$\$\$	\$\$\$\$
#####-13	Bed & Breakfast	0.40	\$\$\$\$	\$\$\$\$

Only 3 of the 12 comparables shown above have commercial land values that support the subject’s \$\$\$\$ per square rate, and all 3 are associated with bed and breakfast properties that were reappraised in

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2007. From the comparables provided, it appears that most commercial land values in CITY 1 were not increased in 2007. The County presented no evidence to show why this disparity in commercial land values is not inequitable. As a result, it would be inequitable to leave the subject's commercial land rate at \$\$\$\$ per square foot. 6 of the 12 comparables were assessed below \$\$\$\$ per square foot, and 6 were assessed above \$\$\$\$ per square foot. Based on this evidence, it would be equitable to assess the subject's 0.51 acres of commercial land at \$\$\$\$ per square foot, which equates to \$\$\$\$\$. Accordingly, the subject's commercial land value should be reduced from its current value of \$\$\$\$ to \$\$\$\$\$.

27. *Residential Land.* The County assessed the subject's first 0.25 acres of residential land at \$\$\$\$ (base lot) and its remaining 0.27 acres of residential land at \$\$\$\$ per acre (\$\$\$\$ for 0.27 acres). The taxpayer provided dozens of comparables with residential land assessments derived in the same manner that the County used to assess the subject's 0.52 acres of residential land. As a result, there is no equalization issue in regards to the subject's residential land assessment.

28. *Improvements.* The County assessed two of the subject's three buildings as commercial property, specifically Building A and Building B. The County assessed Building A (2,622 square foot main house with pool) at \$\$\$\$\$, which equates to \$\$\$\$ per square foot. The County assessed Building B (779 square foot structure with two bedrooms and baths) at \$\$\$\$\$, which equates to \$\$\$\$ per square foot. In total, these two commercial buildings total 3,401 square feet and were assessed at \$\$\$\$\$, which equates to \$\$\$\$ per square foot. The County assessed the subject's remaining building, Building C (1,083 square foot structure with garage and carport), as residential property. The County assessed Building C at \$\$\$\$\$, which equates to \$\$\$\$ per square foot.

29. *Commercial Improvements.* The County assessed the subject's commercial improvements at \$\$\$\$ per square foot. The commercial improvements comparables submitted by both parties show 2007 assessments, as follows:

Parcel Number	Type of Property	Sq. Footage of Improvements	Assessed Value	Assessed Value per Square Foot
Subject	Bed & Breakfast	3,401	\$\$\$\$ (C only)	\$\$\$\$
		4,484	\$\$\$\$ (C & R)	\$\$\$\$
#####-2	Nightly rentals ¹	5,600	\$\$\$\$ (C only)	\$\$\$\$
#####-4	School ²	7,000	\$\$\$\$ (C only)	\$\$\$\$
#####-5	Nightly rentals ³	9,600	\$\$\$\$ (C only)	\$\$\$\$
#####-7	Nightly rentals ⁴	5,296	\$\$\$\$ (C & R)	\$\$\$\$
#####-9	Bed & Breakfast ⁵	3,449	\$\$\$\$ (C & R)	\$\$\$\$
#####-10	Bed & Breakfast ⁶	3,780	\$\$\$\$ (C & R)	\$\$\$\$
#####-11	Bed & Breakfast ⁷	3,991	\$\$\$\$ (C & R)	\$\$\$\$
#####-12	Bed & Breakfast ⁸	1,512	\$\$\$\$ (C & R)	\$\$\$\$
#####-13	Bed & Breakfast ⁹	4,970	\$\$\$\$ (C & R)	\$\$\$\$

1 The taxpayer indicated that the improvements consisted of four apartments that were rented on a nightly basis. The taxpayer also indicated that each apartment was 1,400 square feet in size, which results in a total square footage of 5,600. The County did not refute this information.

2 The taxpayer indicated that this property was once a residential property that was converted into a school, with 8,500 square feet (a former residence (4,000 square feet), a shop (1,500 square feet) and three mobile homes (3,000 square feet)). The County did not refute this square footage. The shop will not be included in square footage, as the square footage of the subject's garage is not included in its square footage.

3 The taxpayer indicated that these 8 units, which were rented on a nightly basis, totaled 9,600 square feet in size. The County did not refute the taxpayer's information and admitted that it had "missed" reappraising this property.

4 It appears that one of the units in this nightly rental may have assessed as residential property, as the commercial improvements value was \$\$\$\$ and the residential improvements value was \$\$\$\$.

5 The tax roll master record for this bed and breakfast shows its improvements to be 3,449 square feet in size. The County assessed the improvements at \$\$\$\$\$, divided between commercial at \$\$\$\$\$ (93% of total) and residential at \$\$\$\$\$ (7% of total).

6 The tax roll master record for this bed and breakfast shows its improvements to be 3,780 square feet in size. The County assessed the improvements at \$\$\$\$\$, divided between commercial at \$\$\$\$\$ (85% of total) and residential at \$\$\$\$\$ (15% of total).

7 The tax roll master record for this bed and breakfast shows its improvements to be 5,291 square feet in size (house with 2,951 main floor and 2,300 walk-out basement). The taxpayer asserts that in 2005 and 2006, the owners enclosed the garage as their living quarters, which the taxpayer argues should bring the total square footage to 6,291. Only the 3,991 square feet of above-grade square footage will be used in the comparison, as the subject's square footage is all above-grade. The County assessed the improvements at \$\$\$\$\$, divided between commercial at \$\$\$\$\$ (50% of total) and residential at \$\$\$\$\$ (50% of total).

8 The tax roll master record for this bed and breakfast shows its improvements to be 1,512 square feet in size. The County assessed the improvements at \$\$\$\$\$, divided between commercial at \$\$\$\$\$ (69% of total) and residential at \$\$\$\$\$ (31% of total).

9 The tax roll master record for this bed and breakfast shows its improvements to be 4,970 square feet

The uniformity provisions of Utah Constitution, Art. XIII, Sec. (2)(1), require property to be “assessed at a uniform and equal rate in proportion to its fair market value.” This constitutional requirement is embodied in Utah Code Ann. §59-2-1004 that requires an adjustment to the assessed value of property if “the fair market value of the property that is the subject of the appeal deviates plus or minus 5% from the assessed value of comparable properties. . . .”

The subject property is a bed and breakfast (“B&B”). Five other CITY 1 bed and breakfasts are identified in the chart above. The improvements values for those B&B’s range from about \$\$\$\$\$ to \$\$\$\$\$ per square foot.¹⁰ The subject’s improvements are the lowest in value per square foot—hardly a compelling equalization case.

Although properties identified as “nightly rentals” and a former residential property that has now been converted into a school are assessed at lesser values per square foot than B&B’s, none of these appear to be comparable properties within the meaning of Section 59-2-1004. There is no justification for including the school in the analysis. The other nightly rentals are small apartment buildings with from four to eight units. The assessor testified that these properties were inadvertently omitted from the commercial reappraisal. But even if they had been reappraised, four-plexes and eight-plexes are not comparable to the subject. Moreover, the record is devoid of any evidence on the age or condition of those apartments. For these reasons, the taxpayer has not submitted evidence to show that the subject’s commercial improvements are inequitable when compared with the assessments of comparable commercial properties. The subject property is assessed equitably with other bed and breakfast properties. Accordingly, the fair market value of the subject’s commercial improvements requires no equalization adjustment.

in size. The County assessed the improvements at \$\$\$\$\$, divided between commercial at \$\$\$\$\$ (50% of total) and residential at \$\$\$\$\$ (50% of total).

¹⁰ The \$\$\$\$\$ per square foot property is less than half the size of any of the other B&B’s. This property is clearly an outlier in terms of size and value per square foot.

30. *Residential improvements.* The County assessed the subject's 1,083 square feet of residential improvements at \$\$\$\$ per square foot. This rate of assessment is not equal with the rates at which most other residential improvements in the subject's neighborhood were assessed for 2007. The taxpayer submitted approximately 46 comparables showing how residential properties in her neighborhood were assessed. 31 of the 46 comparables show assessments of residential improvements ranging between \$\$\$\$ and \$\$\$\$ per square foot. Only 3 of the 46 comparables show assessments over \$\$\$\$ per square foot that would support the rate at which the subject's residential improvements were assessed. The mean assessment rate of the 46 comparables' residential improvements is \$\$\$\$ per square foot. The 8 comparables with residential improvements most similar to the subject's residential improvements in age and size had assessment rates ranging between \$\$\$\$ and \$\$\$\$ per square foot. From this information, it is clear that the subject's residential improvements are not equitably assessed when compared to the assessments of nearby residential properties. One of the comparables, Parcel No. #####-12, has a 1,300 square foot single family residence that was built in 1958 and remodeled in 1994. The residential improvements for this comparable were assessed at \$\$\$\$\$, which equates to \$\$\$\$ per square foot. It would be equitable to apply this same assessment rate to the subject's residential improvements. Applying the \$\$\$\$ rate to the subject's 1,083 square feet of residential improvements results in a value of \$\$\$\$\$. Accordingly, the subject's residential improvements value should be reduced from its current value of \$\$\$\$\$ to \$\$\$\$\$.

Residential Exemption

31. Because PETITIONER uses all three structures on the subject property for her personal use and because the subject property is used as a bed and breakfast for less than half of the year (22 weeks in 2006), she argues that the entire property should qualify for the primary residential exemption.

32. The County stated that it estimated that 24% of the subject's improvements should receive the residential exemption based on its understanding that the prior owners lived in an area comprising this amount

of the total square footage. The County also stated that it applied the residential exemption to 50% of the land because it had assessed other properties on the same basis.

33. Although the taxpayer claims to use all structures on the property, part of the structures are used for a commercial, not residential, purpose. The taxpayer has not shown that the residential exemption allowed by the County is inadequate for either the land or the improvements.

34. Furthermore, the residential exemption allowed by the County for the subject property falls within the parameters of the residential exemption percentages that the County applied to other bed and breakfast properties for 2007. The taxpayer did not provide sufficient evidence to show that the percentage of residential exemption applied to the subject property's land or improvements is inequitable.

APPLICABLE LAW

1. Utah Code Ann. ("UCA") §59-2-102(12) (2007) defines "fair market value" 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, 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."

2. UCA §59-2-103(1) (2007) 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 provided by law."

3. UCA §59-2-103(2) (2007) provides that ". . . the fair market value of residential property located within the state shall be reduced by 45% . . ." For purposes of this exemption, "residential property"

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is defined in UCA §59-2-102(31) (2007) to mean “any property used for residential purposes as a primary residence. It does not include property used for transient residential use . . .”

4. UCA §59-2-1101(3)(g) (2007) provides that intangible property is exempt from taxation. UCA §59-2-102(20) (2007) defines intangible property as “(a) property that is capable of private ownership separate from tangible property, including: (i) moneys; (ii) credits; (iii) bonds; (iv) stocks; (v) representative property; (vi) franchises; (vii) licenses; (viii) trade names; (ix) copyrights; (x) patents; . . . or (c) goodwill.”

5. UCA §59-2-1006(1) (2007-2010) provides that “[a]ny 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”

6. UCA §59-2-1006(4) (2007-2010) provides that “[i]n 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.”

7. Any party requesting a value different from the value established by the County BOE has the burden to establish that the market value of the subject property is other than the value determined by the County BOE. For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount proposed by the party. *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, (Utah 1979); *Beaver County v.*

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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).

CONCLUSIONS OF LAW

1. The Tax Commission reduced the subject's 2006 value to \$\$\$\$\$, based on evidence relevant to the 2006 tax year. The taxpayer contends that the subject's value should not have increased for the 2007 tax year. For the 2006 appeal, however, different evidence and circumstances existed for the Commission to consider than existed for the 2007 appeal. Each tax year results in a separate assessment, which must be considered separately on the basis of the evidence that exists for that tax year. Accordingly, the Commission is not persuaded by the taxpayer's argument that the subject's 2007 value should be based on the Commission's 2006 determination.

2. Although the subject property is zoned R-3, it was granted a Conditional Use Variance to operate as a bed and breakfast for the tax year at issue. Because the subject property received a Conditional Use Variance to operate as commercial property, this zoning variance must also be considered when valuing the subject property. Accordingly, it was appropriate for the County to consider and apply commercial appraisal techniques and information when deriving a fair market value for the subject property. Such consideration does not improperly capture any value of the bed and breakfast business operated at the subject property. It merely captures the value of the subject's real property.

3. Fair Market Value. The taxpayer has not shown that the subject's 2007 fair market value is less than the County's current value of \$\$\$\$\$. The taxpayer's evidence concerning her 2004 purchase of the subject property to arrive at fair market value for 2007 is unconvincing. Although the County did not provide information to convincingly show that the subject's 2007 fair market value is \$\$\$\$\$, the County does not have the burden of proof in this matter. The County's value is presumed to be correct unless the evidence shows the current value to be erroneous and to demonstrate a better value. The evidence submitted at the

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hearing concerning fair market value does not show that the subject's current value of \$\$\$\$ does not reflect its fair market value.

4. The County assessed the subject property on a cost approach. Although the cost approach may not be the most preferable valuation method, it is a valid method for assessing property. The taxpayer submitted information and made arguments to propose a lower fair market value for the subject's land. However, the information presented at the hearing did not convincingly show that any of the County's separate cost values, including its separate cost values for the subject's land, were higher than the fair market values of the components.

5. Equalization. The Commission has found that the taxpayer has not shown that the subject's fair market value, as of January 1, 2007, is less than its current value of \$\$\$\$. Nevertheless, the subject's value may be reduced if the evidence shows that subject's value deviates more than 5% from the values at which other comparable properties are assessed. Section 59-2-1006(4)(b). *See also Rio Algom Corp. v. San Juan County*, 681 P.2d 184 (Utah 1984), in which the Utah Supreme Court found that even though a property's assessed value may properly represent its "fair market value," the assessed value should be reduced to a value that is uniform and equitable if it is higher than the values at which other comparable properties are assessed.

6. As explained earlier, the values at which the County assessed the subject property's commercial land and residential improvements deviated more than 5% from the values at which these components were assessed in regards to other comparable properties and, as a result, require adjustment for equalization purposes. The values at which the County assessed the subject's residential land and commercial improvements do not require adjustment. The subject property's total value should be reduced to \$\$\$\$ for equalization purposes, with the values of the individual components adjusted, as follows:

	County BOE Value	Equalized Value
Commercial Land	\$\$\$\$\$	\$\$\$\$\$
Residential Land	\$\$\$\$\$	\$\$\$\$\$
Commercial Improvements	\$\$\$\$\$	\$\$\$\$\$
Residential Improvements	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>
TOTAL	\$\$\$\$\$	\$\$\$\$\$

7. The County's determination that the residential exemption should only be applied to the residential land value and residential improvements value should be sustained.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that the subject's 2007 market value should be reduced to \$\$\$\$\$ and that its 2007 taxable value should be reduced to \$\$\$\$\$, as follows:

	2007 Market Value	2007 Taxable Value
Commercial Land	\$\$\$\$\$	\$\$\$\$\$
Residential Land	\$\$\$\$\$	\$\$\$\$\$
Commercial Improvements	\$\$\$\$\$	\$\$\$\$\$
Residential Improvements	<u>\$\$\$\$\$</u>	<u>\$\$\$\$\$</u>
TOTAL	\$\$\$\$\$	\$\$\$\$\$

The RURAL COUNTY Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

Appeal No. 08-1459

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Michael J. Cragun
Commissioner

PARTIAL CONCURRENCE AND PARTIAL DISSENT

I concur with my respected colleagues in all aspects of their majority decision, with one exception. I dissent from the majority's conclusion that the subject property's commercial improvements are assessed at a value that is equalized with the assessments of other comparable properties. I recognize that the subject property's assessment is equalized with the assessments of other bed and breakfast properties in CITY 1, as all bed and breakfast properties were reappraised for 2007. Nevertheless, the County does not appear to have reappraised other nightly rental commercial properties for 2007, even though the County claimed that it did. The County claimed that when it reappraised commercial properties in 2007, it must have "missed" the nightly rentals that the taxpayer identified and that are listed in Finding of Fact #29. However, with the exception of the bed and breakfast properties, the County has not given the Commission a single commercial property that it is assessed at a rate similar to the \$\$\$\$ per square foot rate at which the subject's commercial improvements are assessed.

Unlike the majority, I believe that the nightly rentals identified in Finding of Fact #29 are properties that are comparable to the subject for equalization purposes. These nightly rentals compete with the subject and other bed and breakfast properties for nightly rentals in the CITY 1 market. The nightly rental comparables are located in the subject's neighborhood, whereas several of the bed and breakfast comparables

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are located in other areas of CITY 1. These nightly rentals' commercial improvements are assessed at rates ranging between \$\$\$\$ and \$\$\$\$ per square foot. It is unjust to assess the subject's commercial improvements at \$\$\$\$ per square feet when nearby, commercial properties that compete for nightly rentals are assessed at rates that are grossly lower. If the \$\$\$\$ to \$\$\$\$ per square rates are applied to the subject's 3,401 square feet of commercial improvements, the subject's commercial improvements would have an equalized value ranging between \$\$\$\$ and \$\$\$\$. Based on these amounts, I believe it would be inequitable to assess the subject at a value any higher than \$\$\$\$. Accordingly, for purposes of equalization, I would reduce the value of the subject's commercial improvements from their current value of \$\$\$\$ to \$\$\$\$.

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

KRC/08-1459.fof