

09-1586
LOCALLY ASSESSED PROPERTY
SIGNED 09-21-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF
DAVIS COUNTY,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-1586

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2008

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 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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP 1
PETITIONER REP 2

For Respondent: RESPONDENT REP 1, Appraiser for Davis County
RESPONDENT REP 2, Appraisal Supervisor for Davis County
RESPONDENT REP 3, Davis County Assessor

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Davis County Board of Equalization ("the County") for the January 1, 2008 lien date. This matter was argued in an Initial Hearing on August 11, 2009. The County assessed the property at \$\$\$\$\$. The Board of Equalization reduced the value of the subject to \$\$\$\$\$. The County is requesting the Commission sustain the Board of Equalization value. The Taxpayer is requesting the value of the property be reduced to \$\$\$\$\$.

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.

Utah Code Ann. §59-2-103 (2008).

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) (2008).

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.

Utah Code Ann. §59-2-1006 (2008).

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 CITY 3County*, 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).

DISCUSSION

The subject property is a 3.09-acre parcel located at ADDRESS in CITY 1, Utah. It is improved with a 38,293 square foot Class C warehouse constructed in 1995. Taxpayer is requesting the value of the subject be reduced to \$\$\$\$\$. Taxpayer argued that it is being taxed at a higher rate per square foot than other properties. In support of its requested value, Taxpayer provided information on the valuation of three buildings that it considers to be comparable to the subject.

- a. Taxpayer’s first comparable is also owned by Taxpayer but is located on ROAD. Taxpayer’s representative stated that this property was valued at \$\$\$\$\$ per square foot. He stated that this building is on a similarly sized lot, but that the improvements are of metal construction. However, the building is located on a major road, which would increase the value.
- b. Taxpayer’s second comparable is the COMPANY A building. Taxpayer’s representative stated that this property was valued at \$\$\$\$\$ per square foot. This was after \$\$\$\$\$ per acre was subtracted for each of the eight acres of additional land.
- c. Taxpayer’s third comparable is the COMPANY B building. It sold for \$\$\$\$\$ per square foot on February 9, 2007.

In support of the Board of Equalization, the County submitted a retrospective appraisal. The County’s appraiser determined that the subject had a fair market value of \$\$\$\$\$ as of the January 1, 2008 lien date. The County used both the sales comparison and income approaches to arrive at its requested value.

The County’s appraiser used the following sales in its sales comparison approach:

	Subject	Sale #1	Sale #2	Sale #3	Sale #4	Sale #5	Sale #6	Sale #7
Location	ADDRESS 1	ADDRESS 2	ADDRESS 3	ADDRESS 4	ADDRESS 5	ADDRESS 6	ADDRESS 7	ADDRESS 8
City	CITY 1	CITY 1	CITY 1	CITY 2	CITY 1	CITY 1	Salt Lake	Salt Lake
Zoning	MD	MD	MD	I-H	MD	MD	GC	Industrial
Lot Size	134,600	270,072	608,968	90,604	159,430	217,800	202,990	N/A
Bldg Size	38,293	36,300	112,552	27,025	111,501	58,072	53,269	55,292
Use	Warehouse	Warehouse	Warehouse	Warehouse	Warehouse	Warehouse	Warehouse	Warehouse
Class	C	C	C	C	C	C	C	C
Height	24’	20’	20’	20’	20’	22’	18’	N/A
% Office	17%	5%	7%	10%	5%	11%	10%	12%
Year Built	1995	1986	1972	1978	1980	1965	1977	1962
Bldg/Land	28%	13%	7%	30%	70%	27%	26%	12%
Sale Date		4/1/08	6/21/07	2/5/07	11/29/06	1/1/08	9/1/06	9/13/07
Price/Sq.Ft.		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The County reduced the price per square foot of comparable numbers 1 and 2 by \$\$\$\$ per square foot to account for the excess land, to \$\$\$\$ and \$\$\$\$ per square foot respectively.

The County’s appraisal also used the income approach to arrive at a value for the subject of \$\$\$\$\$. The County’s appraisal used a lease rate of \$\$\$\$ per square foot for the subject. The County’s appraiser looked at both market rents to arrive at the lease rate. Below is a breakdown of the market rents:

	Subject	Rent 1	Rent 2	Rent 3	Rent 4	Rent 5
Location	ADDRESS 1	ADDRESS 9	ADDRESS 2	ADDRESS 10	ADDRESS 11	ADDRESS 12
City	CITY 1	CITY 1	CITY 1	CITY 1	CITY 1	CITY 1
Zoning	MD	MD	MD	MD	I-I	M-1
Leased Sq.Ft.	38,293	37,888	36,300	33,170	39,600	104,520
Use	Warehouse	Warehouse	Warehouse	Warehouse	Warehouse	Warehouse
Class	C	C	C	C	C	C
Height	24’	30’	20’	18’	30’	30’
% Office	17%	13%	5%	19%	10%	8%
Year Built	1995	2005	1986	1961	2007	2006
Lease Date		5/1/05	11/1/07	N/A	12/1/07	4/3/07
Lease Basis	NNN	NNN	NNN	NNN	NNN	NNN
Lease Rate		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$

The County used a vacancy rate of 9% based on market data. The appraiser also made a reduction of 3% for management fees and 10% for replacement and reserves. A capitalization rate of 8.07% was used, and was taken from the Commerce CRG year-end report for 2007. Below are the County’s calculations:

Square Feet Rentable	38,239
Rate Per Square Foot	\$\$\$\$
Potential Gross Income	\$\$\$\$
Vacancy & Collection Loss	9%
Miscellaneous Income	\$\$\$\$
Effective Gross Income	\$\$\$\$
Management	3%
Reserve	10%
Net Operating Income	\$\$\$\$
Cap Rate	%%%%
Tax Rate	1.22%
Overall Rate	9.5%
Value	\$\$\$\$

In rebuttal, the Taxpayer argued that the County’s comparable sale #1 and lease #2 are not a good indication of value. Taxpayer’s representative stated that the lease rate was inflated because the seller was in the process of constructing a new building and needed an open-ended lease. She stated that they have not been able to lease the building since, In addition she argued that the purchaser overpaid for the property because they wanted the land to develop.

In seeking a value other than that established by the board of equalization, a party has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but must also provide an evidentiary basis to support a new value. Both the Taxpayer and the County have provided sufficient information to demonstrate that the \$\$\$\$ value established by the Board of Equalization was in error. The Commission next looks to the evidence provided by each party in support of its reduced value.

In support of its requested value of \$\$\$\$\$, the Taxpayer provided information on the per square foot assessed value of two properties, and the per square foot sales price of a third property. The County submitted a retrospective appraisal report that used both the sales comparison and income approaches in support of the Board of Equalization value. In its income approach, the County's representative used market rates for rent, vacancy, management fees, and replacement/reserves. Though the Commission has some concern that lease comparables 4 and 5 resulting in a higher than market lease rate, the Taxpayer did not raise this argument. The County's sales comparison analysis looked at seven comparable warehouse buildings. They ranged in size from 27,025 to 112,552 square feet, and had sales prices ranging between \$\$\$\$ and \$\$\$\$\$. Though not identical to the subject, the comparables are all Class C office buildings, with comparables 1, 2, 4, and 5 all being located in CITY 1. The Commission finds that the Taxpayer has not sustained its burden of proof to reduce the value of the subject to \$\$\$\$\$. Taxpayer provided information on only one sale, the COMPANY B building. However, the Taxpayer did not provide information for the Commission to determine whether this sale is truly comparable to the subject, nor did the Taxpayer make any adjustments to account for the differences. The County used both the income approach and sales comparison approach to support the Board of Equalization value. Under the circumstances, the Commission finds the value of the subject to be \$\$\$\$\$ as of the January 1, 2008 lien date.

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the Board of Equalization value of \$\$\$\$\$. 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
CITY 3City, Utah 84134

Appeal No. 09-1586

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2009.

Jan Marshall
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

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