

09-1822
LOCALLY ASSESSED PROPERTY
SIGNED 02-16-2010

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-1822</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2008</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:

Jane Phan, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was argued in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on December 14, 2009. Petitioner (the “Property Owner”) is appealing the assessed value as established for the subject property by the Salt Lake County Board of Equalization, as of the lien date January 1, 2008. The County Assessor had set the value at \$\$\$\$ and the County Board of Equalization reduced the value to \$\$\$\$\$. The Property Owner requests that the value be lowered to \$\$\$\$\$. At the hearing, the representative for Respondent (the “County”) provided an income indicator that supported a value of \$\$\$\$\$. This was lower than the County Board of Equalization’s value, but not as low the value requested by the Property Owner.

APPLICABLE LAW

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 (1).)

“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. (Utah Code Ann. 59-2-102(12).)

(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).)

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 . . .”

DISCUSSION

The subject property is parcel no. ##### and is located at ADDRESS 1, in Salt Lake County, Utah. The property is a commercial strip mall center, called NAME. The property consists of small retail stores and commercial tenants. There is no anchor tenant. Additionally, two of the three large box retail buildings near this property have been vacant for some period of time.

Neither party submitted a complete appraisal in this matter. However, both parties did submit an income capitalization indicator in support of their positions. Both parties had used the same potential gross income of \$\$\$\$\$ in their indicators. The differences in the value conclusions came from a disagreement over vacancy and expenses. The representative for the Property Owner indicated that the vacancy rate should be 12%. He did submit a study from Commerce CRG that stated for anchorless retail centers the year-end 2007 vacancy rate was 12.19%. He acknowledged that during 2007 all units were rented and there was no actual vacancy, but pointed out that if one unit became vacant the vacancy would be at least 12%.

The County's representative argued that because the subject had no vacancy they used a stabilized vacancy rate of 10%. She also submitted a Commercial Real Estate Symposium study on vacancy rates, which considered the rates by quadrant in Salt Lake County. She pointed out that this study stated that for the southeast quadrant, where this property was located, the vacancy rate for anchorless centers was only 5.96%. This study did indicate that other areas of the County had higher vacancy rates for anchorless centers. The representative for the County pointed out that the study relied on by the Property Owner, was for the entire Salt Lake market area.

The second difference in the parties' income indicators was the expenses. The Property Owner's income capitalization indicator had allowed for 13% expenses, which were comprised of 3% reserves, 5% management fees and 5% expenses not covered by the CAM charges. The representative for the Property Owner explained that for this property the actual management fee expenses were 6%, but he had used a more conservative 5% in his calculation. The County's representative had allowed 3% for reserves and 7% for management fees and all other expenses, a total of 10%. She argued that the unreimbursed expenses cited by the Property Owner may actually be expenses that should have come from reserves. The representative for the Property Owner did not have information to show what these reimbursed expenses had been.

The burden to show error in the value set by the County Board of Equalization has been met in this matter based on information from both the Property Owner and the County. However, the Property Owner's information regarding both vacancy and expenses was not sufficient to counter the information presented by the County in this matter. The weight of the evidence supports the new lower value requested by the County at this hearing.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2008, is \$\$\$\$\$. The County Auditor is hereby ordered to adjust its records in accordance with this decision. 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:

Appeal No. 09-1822

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

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

DATED this ____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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