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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER

Petitioner,

vs.

BOARD OF EQUALIZATION OF DAVIS  
COUNTY, UTAH,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 09-2326

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2008

Judge: Marshall

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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:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP, Managing Member

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

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Davis County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on October 29, 2009. The Davis County Assessor's Office assessed the subject property at \$\$\$\$ as of the January 1, 2008 lien date. The Board of Equalization reduced the value to \$\$\$\$\$, which the County is asking the Commission to sustain. The Taxpayer is requesting the value of the subject 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...
- (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.

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 Salt Lake County*, 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 parcel no. #####, located at ADDRESS in CITY 1. It is a 6.63-acre parcel improved as a mobile home community. The mobile home community was built in 1973 and has 49 improved pads. The County considers the subject to be a “C” grade community in average condition.

Taxpayer is requesting a reduction in value of the subject from \$\$\$\$\$ to \$\$\$\$\$. Taxpayer’s representative arrived at this value by using a modified gross rent multiplier (“GRM”). He provided information on the subject property and three similar mobile home communities located in the County. The Taxpayer’s representative used the County’s assessed market value for each of the properties as the “sales price” to determine the GRM. Based on the Board of Equalization value of \$\$\$\$\$, the Taxpayer’s representative determined a GRM of 6.61 for the subject. His three comparable mobile home communities have an average GRM of 5.0. Taxpayer’s representative argued that the subject’s GRM is 32.2% higher than the average GRM of comparable, and thus the property taxes are 32.2% higher than comparable communities.

Following are the Taxpayer’s value calculations:

	Subject	COMMUNITY A	COMMUNITY B	COMMUNITY C
<b>Davis Co. Rating</b>	C	B+	B+	C+
<b>Number of Lots</b>	49	42	51	46
<b>Monthly Rent</b>	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
<b>Annual Gross Rent</b>	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
<b>2008 Market Value</b>	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
<b>Multiplier</b>	#####	#####	#####	#####
<b>Average GRM</b>	5.00			
<b>Subject Value using comparables’ GRM</b>		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
<b>Subject Value using average GRM</b>	\$\$\$\$\$			

Taxpayer’s representative also argued that the subject is inferior. He stated that the information provided by the County shows that the comparable mobile communities are superior. The County has placed a “C” grade on the subject, while the comparables are “C+” and “B+”. Taxpayer argues that the comparables are appreciably better than the subject, and equity requires that the valuation and taxes for the subject should be appreciably lower.

Additionally, Taxpayer argued that if the County is going to determine value using a capitalization rate, that the actual rents should be used. Taxpayer stated that the rents for the subject result in a potential gross income of approximately \$\$\$\$\$, not the \$\$\$\$\$ used by the County. When questioned by the County as to whether Taxpayer charged market rent, the Taxpayer’s representative answered that they keep rents “reasonable.” He explained that it is difficult to raise rents because many of the tenants; some of them are mentally challenged, some receive public assistance, church assistance, or their families pay the rent for them.

In support of the Board of Equalization, the County submitted a retrospective appraisal report using both the sales comparison and income capitalization approaches. Using the sales comparison approach, the County determined a value of \$\$\$\$\$ per pad, or \$\$\$\$\$. The County determined a value of \$\$\$\$\$ using the income capitalization approach. The County’s appraiser reconciled the two approaches to arrive at an overall value of \$\$\$\$\$. However, the County is requesting the Commission sustain the Board of Equalization value of \$\$\$\$\$ on an equalization basis. The County’s representative stated that the per pad value of comparable communities ranges from \$\$\$\$\$ to \$\$\$\$\$, and that if valued at \$\$\$\$\$, the subject falls within that range.

The County’s representative stated that there were a limited number of similar properties in the market area. The County used three comparable sales, and placed the most weight on comparable number one. Following is a breakdown of the County’s comparable sales:

	<b>Subject</b>	<b>Sale #1</b>	<b>Sale #2</b>	<b>Sale #3</b>
<b>Address</b>	ADDRESS CITY 1	ADDRESS 2 CITY 2	ADDRESS 3 CITY 3	ADDRESS 4 CITY 4
<b>Number of Pads</b>	49	204	116	205
<b>Zoning</b>	R-H	R-MH	RM-7	R-M
<b>Sales Date</b>		12/07	4/04	1/02
<b>Sales Price</b>		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
<b>Price/Pad</b>		\$\$\$\$\$/pad	\$\$\$\$\$	\$\$\$\$\$
<b>ADJUSTMENTS</b>				
<b>Financing</b>		0%	0%	0%
<b>Location</b>	Average	Superior -10%	Inferior 5%	Superior -10%
<b>Condition</b>	Average	Equal 0%	Inferior 5%	Superior -10%
<b>Grade</b>	C	A- -15%	C+ -5%	A- -15%
<b>Number of Pads</b>		10%	5%	10%
<b>Zoning</b>		0%	0%	0%
<b>Net Adjustments</b>		-15%	10%	-25%
<b>Gross Adjustments</b>		35%	20%	45%
<b>Adjusted Price/Pad</b>		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
<b>Weight</b>		60%	20%	20%

The County’s appraisal also included an income capitalization approach to value. The County determined a value of \$\$\$\$\$, or \$\$\$\$\$ per pad. The County determined a market rent of

a pad to be \$\$\$\$\$ per year, or \$\$\$\$\$ per month. Applying this to the subject, the County arrived at a potential annual income of \$\$\$\$\$ for the subject. Following is a summary of the rent comparables used by the County:

	Subject	Rent #1	Rent #2	Rent #3	Rent #4
Address	ADDRESS . CITY 9	ADDRESS 5 CITY 5	ADDRESS 6 CITY 6	ADDRESS 7 CITY 6	ADDRESS 8 CITY 2
PGI / Year		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Yearly Rent/Pad		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Location	Average	Equal 0%	Equal 0%	Equal 0%	Equal 0%
Condition	Average	Equal 0%	Equal 0%	Equal 0%	Inferior 5%
Grande	C	D+ 10%	B+ -10%	B+ -10%	D+ 10%
Number of Pads	49	36 0%	50 0%	45 0%	18 -5%
Zoning	R-H	RM-19 0%	C-2 0%	R-S-12 0%	R-MH 0%
Net Adjustment		10%	-10%	-10%	10%
Gross Adjustment		10%	10%	10%	20%
Adjusted Rent/Pad		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Weight		25%	25%	25%	25%

The County looked at a number of mobile home community sales to determine a capitalization rate of %%% for the subject. The capitalization rates ranged from %%% to %%%, and the County used the %%% rate because the more recent sales were at the high end of the capitalization rate range. The County’s appraisal indicates that the %%% capitalization rate for COMMUNITY D is an estimate. Following is a summary of the sales used to determine the capitalization rate:

<u>Community</u>	<u>City</u>	<u>Sale Year</u>	<u>Cap Rate</u>
COMMUNITY E	CITY 7	2000	%%%
COMMUNITY F	CITY 3	2000	%%%
COMMUNITY G	CITY 8	2000	%%%
COMMUNITY H	CITY 9	2000	%%%
COMMUNITY I	CITY 10	2000	%%%
COMMUNITY J	CITY 2	2001	%%%
COMMUNITY K	CITY 2	2002	%%%
COMMUNITY L	CITY 4	2002	%%%
COMMUNITY M	CITY 3	2004	%%%
COMMUNITY D	CITY 2	2007	%%%

The County used an expense rate, excluding property taxes, of %%. The County determined this amount from a survey of mobile home communities and found that expenses range between %% and %%.

Following is a breakdown of the County’s income approach calculation of value:

<b>Potential Gross Income</b>		<b>\$\$\$\$\$</b>
Vacancy Rate	10%	(\$\$\$\$\$)
<b>Effective Gross Income</b>		<b>\$\$\$\$\$</b>
Operating Expenses (Market)		(\$\$\$\$\$)
Expenses as Percentage of EGI	37%	
<b>Net Operating Income</b>		<b>\$\$\$\$\$</b>
Capitalization Rate	%%%%%%%%	
Tax Rate	0.60%	
Overall Rate	%%%%%%%%	
<b>Indicated Value</b>		<b>\$\$\$\$\$</b>
<b>Rounded Market Value</b>		<b>\$\$\$\$\$</b>
<b>Value per Unit</b>		<b>\$\$\$\$\$</b>

In seeking a value lower than that established by the board of equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. Property tax is based on the market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines “market value” as the amount for which property would exchange hands between a willing buyer and seller. Taxpayer raised two arguments; the first regarding the income capitalization determination of value, and the second regarding the valuation of the subject compared to other communities.

The Taxpayer argued that in calculating the value using an income capitalization method, the actual rents should be used rather than the market rent determined by the County. Generally, using actual income and expenses is preferred in using an income capitalization method. However, Taxpayer’s testimony indicates that he is charging below market rent. This is corroborated by the monthly rents reported for the comparable communities. Under the circumstances, the market rate used by the County in its capitalization approach was appropriate. The Taxpayer made no argument regarding the sales comparison approach used by the County. The market value of the property appears to be the \$\$\$\$\$ as determined by the County’s appraisal.

The thrust of Taxpayer’s request for a reduction in value is an equalization argument based upon the County’s valuation of three nearby communities. To prevail under Utah Code Ann. §59-2-103, the Taxpayer must first raise an equalization argument and then show that the value of the subject property deviates plus or minus 5% from the assessed value of comparable properties. Utah Code Ann. §59-2-103 provides that property shall be assessed on a uniform and equal rate on the basis of its fair market value. However, the Court in *Mountain Ranch Estates v. Utah State Tax Comm’n*, 100 P.3d 1206, 1210 (Utah 2004) found:

Fair market value indeed becomes a subordinate consideration in a scenario where a property owner’s assessment accurately reflects the fair market value, but nevertheless exceeds by more

than five percent the valuation of comparable properties. Where an accurate fair market value assessment stands apart from a group of undervalued comparable properties, valuation accuracy may not be used to defend the otherwise aberrant assessment. The property owner “singled out” for a legitimate fair market value assessment would be entitled to relief under Section 59-2-1006(4).

As previously determined, the \$\$\$\$ determined by the County’s appraisal is arguably the fair market value of the property. Rather than seeking the market value of the subject, the County has asked the Commission to sustain the Board of Equalization value of \$\$\$\$ on an equalization basis. The County’s representative stated that if the \$\$\$\$ value is sustained, the price per pad for the subject falls within the assessed value range of the comparable communities. The assessed value range of the comparable communities is from \$\$\$\$ to \$\$\$\$ per pad site. The subject property, at a \$\$\$\$ value, has a per pad value of \$\$\$\$\$. While the County is correct that this value falls within the valuation range, even at that value the subject is valued an average of 5.04% higher per pad site than the comparable communities. Further, the subject is inferior to the comparable communities. The County’s documentation has rated the subject as a “C” grade community, two of the communities are a “B+” grade, and the other is a “C+” grade. Sustaining the Board of Equalization value, just because it falls within the range of values on a per pad site basis does not equalize the value of the subject. Because it is inferior to the comparable communities, the subject should be valued at the low end of the range. Using the lowest value per pad site of \$\$\$\$\$, the subject would have a value of \$\$\$\$\$.

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Jan Marshall  
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Commission finds the value of the subject to be \$\$\$\$ as of the January 1, 2008. The County Auditor is 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:

Utah State Tax Commission

Appeal No. 09-2326

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

*JM/09-2326.int*