

09-3037
LOCALLY ASSESSED PROPERTY
SIGNED 09-21-09

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION FOR DAVIS COUNTY, UTAH, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-3037</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2008</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP
For Respondent: RESPONDENT REP 1, Appraiser for Davis County
RESPONDENT REP 2, Appraisal Supervisor for Davis County

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 August 5, 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 \$\$\$\$\$. The County is requesting the Commission sustain the Board of Equalization decision. 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.

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, Utah. It is a 0.42-acre parcel improved with a 9,380 square foot airplane hangar. The hangar has two bays, and is of metal construction.

The Taxpayer’s representative stated that the subject property has limited use as a personal hangar, and cannot be used for any commercial venture. He noted that the subject could easily hold seven aircraft, but is restricted to housing only two planes. He provided a copy of the CITY 1 Planning Commission notes from November 14, 2000, where the site plan for the subject was approved for use only as a hangar and for storage of personal items. The Taxpayer’s representative also submitted a letter from the ASSOCIATION. The letter from the Association indicates that there are only two inadequate parking stalls for the subject, and so they request the only usage of the property be as a hangar. It is the Association’s opinion that if the subject is used for multiple uses, the vehicles parked in front of the hangar will cut into the 18-foot setback and will not allow airplane passage of the hangar. In addition, he submitted a page purportedly from the ASSOCIATION that prohibits the use of lots in the (X) for airport or commercial aviation services.

Taxpayer’s representative submitted the following comparable properties in support of the requested value of \$\$\$\$\$:

Address	ADDRESS 2., CITY 2	ADDRESS 3, CITY 2	ADDRESS 4, CITY 3	ADDRESS 5, CITY 3	ADDRESS 6, CITY 3
Sales Date	8/6/07	8/12/08	8/17/07	9/18/07	8/21/07
Price/Sq.Ft.	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Price	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Land Size	1.0 ac.	6.3 ac.	.54 ac.	.70 ac.	1.29 ac.
Bldg. Size	12,089 Sq.Ft.	55,937	6,000	12,000	34,192
Office Sq.Ft.	985	0	456	900	2,051
Land/Bldg	3.6	4.91	3.92	2.54	1.52
Year Built	1984	1969	1994	1997	1985
Traffic	0%	-5%	0%	0%	0%
Age	8%	15%	3%	0%	8%
Office	-5%	0%	-5%	-8%	-8%
Obsolesence	-25%	-25%	-25%	-25%	-25%
Extras	-10%	0%	-10%	0%	0%
Adjustment	-32%	-15%	-37%	-33%	-25%
Price/Sq.Ft.	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The Taxpayer’s representative argued that because of the restrictions on the use of the property, there is considerable functional obsolescence, and made a 25% adjustment to his comparable properties. He adjusted for office area at \$\$\$\$\$ per square foot, and allowed 0.5% per year for age difference. In addition, adjustments were made for the sale of personal property included in sale numbers one and three, and an adjustment was made to account for the annual

cost of the (X) Association fees. With the above adjustments, The Taxpayer’s representative determined that a value of \$\$\$\$\$ per square foot was appropriate.

The County’s representative stated that the Taxpayer’s functional obsolescence adjustment is inappropriate. He argued that the comparable sales should be airplane hangars in the (X). In addition, he argued that even though limited to storing only two planes, because of the size of the subject, it can hold larger aircraft than some of the comparables.

In support of the Board of Equalization value, the County submitted a retrospective appraisal report. The appraisal used both the cost approach and the sales comparison approach to arrive at a value of \$\$\$\$\$.

The County’s cost approach used Marshall and Swift to determine a replacement cost for the improvements of \$\$\$\$\$, and \$\$\$\$\$ for the value of the asphalt. This was added to a land value of \$\$\$\$\$ to arrive at an estimated cost of \$\$\$\$\$. The County used the following sales to arrive at a land value of \$\$\$\$\$ per square foot:

- a. The County’s first comparable is a 3.00 acre parcel located at ADDRESS 7 in CITY 1. It is a vacant interior lot that sold for \$\$\$\$\$, or \$\$\$\$\$ per square foot, on January 1, 2007.
- b. The County’s second comparable is a 3.00 acre parcel located at ADDRESS 8 in CITY 1. It is a vacant interior lot that sold for \$\$\$\$\$, or \$\$\$\$\$ per square foot, on February 1, 2007 ADDRESS 9 in CITY 4. It is a vacant interior lot that sold for \$\$\$\$\$, or \$\$\$\$\$ per square foot, on July 11, 2007.
- c. The County’s fourth comparable is a 3.97 acre parcel located at ADDRESS 9 in CITY 4. It is a vacant interior lot that sold for \$\$\$\$\$, or \$\$\$\$\$ per square foot, on April 26, 2006.
- d. The County’s fifth comparable is a 4.53 acre parcel located at ADDRESS 10 in CITY 4. It is a vacant interior lot that sold for \$\$\$\$\$, or \$\$\$\$\$ per square foot, on October 30, 2006.
- e. The County’s sixth comparable is a 2.5 acre parcel located at ADDRESS 11 in CITY 4. It is a vacant interior lot that sold for \$\$\$\$\$, or \$\$\$\$\$ per square foot, on August 8, 2006.
- f. The County’s seventh comparable is a 7.19 acre parcel located at ADDRESS 12 in CITY 2. It is a vacant interior lot that sold for \$\$\$\$\$, or \$\$\$\$\$ per square foot, on May 15, 2007.

The County’s representative determined a value of \$\$\$\$\$ using the sales comparison approach, based on the following sales:

	Subject	Sale #1	Sale #2	Sale #3	Sale #4	Sale #5
Project	2 bay hangar	3 bay hangar	2 bay hangar	1 bay hangar	1 bay hangar	1 bay hangar
Address	ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS	ADDRESS

	14	15	16	17	18	19
City	CITY 1	CITY 1	CITY 1	CITY 1	CITY 1	CITY 1
Sale Date		4/06	11/04	5/08	8/07	11/08
Sale Price		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Land Size	18,295 sq.ft.	27,007 sq.ft.	20,909 sq.ft.	2,614 sq.ft.	1,575 sq.ft.	1,484 sq.ft.
Building	9,380 sq.ft.	8,279 sq.ft.	7,700 sq.ft.	2,475 sq.ft.	1,575 sq.ft.	1,484 sq.ft.
Construction	Metal	Metal	Metal	Metal	Metal	Metal
Year Built	2000	2005	1999	2002	1999	1990
Eff. Age	5	2	5	2	5	10
Office	0%	0\$	1,470 sq.ft.	0%	0%	0%
Bldg./Land	51%	31%	37%	95%	100%	100%
Price/Sq.Ft.	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Market		0%	30%	0%	0%	0%
Size		0%	0%	-5%	-5%	-5%
Age/Cond.		-3%	0%	2%	0%	10%
Quality		0%	0%	0%	0%	5%
Office		0%	-10%	0%	0%	0%
Adj. Value		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The Taxpayer’s representative argued that the ASSOCIATION has allowed other owners to operate commercial ventures in (X), and that the rules are not applied consistently to all owners. He stated that the Taxpayer was previously involved in litigation against the ASSOCIATION, but lost. It is the Taxpayer’s position that the highest and best use of the subject is less than it could be because of the restrictions on the use of the subject. The County’s representative argued that the litigation is not relevant to the value of the subject, and should be handled in another matter.

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 must also provide an evidentiary basis to support a new value. The Taxpayer raised concerns about restrictions on the use of the property, as well as provided an opinion of value based on five comparable sales. The Commission finds this is sufficient to call into question the value determined by the Board of Equalization.

Property tax is based on the market value of the property, which is defined under Utah Code Ann. §59-2-102 as the amount for which property would exchange hands between a willing buyer and seller. In support of the requested value of \$\$\$\$\$, the Taxpayer submitted five comparable sales. None of the comparables were located in Davis County, or of airplane hangar sales. The Commission finds the Taxpayer’s comparables are not a reliable indication of value for an airplane hangar located in Davis County. In support of the Board of Equalization value, the County provided a retrospective appraisal report using both the cost approach and the sales comparison approach. The County placed the most weight on the sales comparison approach.

All of the County's comparables were of airplane hangars located in the same (X) as the subject. Though there is some concern with the sales dates for the larger hangars, the Commission finds the County's comparables to be a better indication of value for the subject.

DECISION AND ORDER

On the basis of 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
Salt Lake City, Utah 84134

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