09-3838
LOCALLY ASSESSED COMMERCIAL PROPERTY
TAX YEAR: 2009
SIGNED: 04-18-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH, Respondent.	**INITIAL HEARING ORDER** Appeal No. 09-3838 Parcel Nos. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2009 Judges: M. Johnson Cragun

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:
Marc B. Johnson, Commissioner
Michael J. Cragun, Commissioner

Appearances:
For Petitioner: PETITIONER REP. 1, Representative
PETITIONER REP. 2, Representative
For Respondent: RESPONDENT REP. 1, RURAL COUNTY Assessor
RESPONDENT REP. 2, Appraiser

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. § 59-1-502.5, on June 9, 2010. The property was originally assessed at $$$$$ ($$$$$ taxable) by the RURAL COUNTY Assessor, and reduced to $$$$$ ($$$$$ taxable) by the Board of Equalization ("Board" or "BOE"). At the hearing the Petitioner, represented by COMPANY 1 (collectively referred to hereinafter as

the "Taxpayer") requested a value of $$$$$. The BOE, represented by the County Assessor ("County") requested that the current assessment be sustained.

This appeal was heard at the same time as two other appeals by the same representative. The other appeals, 09-3836 and 09-3839, dealt with properties that were in the immediate neighborhood, and dealt with the same issues. Some of the findings and analysis for all of these appeals will be incorporated into all three appeals. Records common to all three appeals are filed in the record for Appeal 09-3839.

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.

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.

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.
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> . . . .
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> (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:
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> (a) the issue of equalization of property values is raised; and
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> (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.
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> . . . .

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).

ISSUES

The property under appeal ("subject property") is a single story, 974 sq. ft. commercial building built in 1871. According to the assessment record, the parcel is 0.10 acres. It is located in an area known as AREA 1, which is the business district of CITY 1, Utah. Within the AREA 1 city block are two areas known as the AREA 1 Subdivision ("Subdivision") and the AREA 1 Condominiums. The subject property is in the Subdivision. The building is referred to as the "BUILDING 1" building, and is used as an office.

The Taxpayer raised an equalization argument on the assessment of the improvements and the land as individual components of the property value and assessment. The Taxpayer first compared the building improvements to three comparable assessed improvements. These sizes of the improvements were 2,268 sq. ft. for the first comparable, 2,724 sq. ft. for the second, and 2,236 for the third. The respective assessment values per sq. ft. were $$$$$, $$$$$, and $$$$$. The Taxpayer argued that the subject improvements should be assessed at the average of the three comparables, $$$$$ per sq. ft., instead of the actual $$$$$ per sq. ft.

The Taxpayer next considered the land assessment. First, the subject land was adjusted for common area, which, as such, had no assessed value and is used for parking in AREA 1. The adjusted allocation was 0.18 acre. The comparable land assessments were 0.25 acres assessed at $$$$$ per acre, 0.12 acres assessed at $$$$$ per acre, and 0.58 acres assessed at $$$$$ per acre. The Taxpayer requests that the subject property be assessed at the average of $$$$$ per acre compared with the actual assessment of $$$$$ per acre. Rather than using the values associated with the comparable buildings, however, the Taxpayer compared land assessments from improved properties that were different than those used for the comparable building assessments. In other words, the Taxpayer identified six different comparable assessments, all of which were improved. Three were used to compare the improvements with the subject improvement, and the other three were used to compare the land with the subject land. The justification for this was that there were no similar improved properties, in terms of age, condition, size, use, etc., that were in closer proximity to AREA 1. Thus the improvement comparables selected by the Taxpayer were further away from the subject property, so the land values were lower and not as comparable.

The Taxpayer acknowledged that land in AREA 1 commanded some premium over land across the street, but not as much as the assessor had given. Parcels across the street were being assessed at roughly

$$$$$ to $$$$$ per acre, whereas AREA 1 land was assessed at $$$$$ to $$$$$ per acre, after adjusting for common area allocations.

The County made two arguments against the Taxpayer's petition. The first argument was that for equalization purposes, assessments cannot be segregated into separate components of land and improvements. The County's argument was that appraisal theory, principles of highest and best use, and the Uniform Standards of Appraisal Practice (USPAP) require that property be valued as a unit. Therefore, according to the County, the appropriate basis to compare properties for equalization purposes is to compare the entire property, not merely the land.

Second, the County argued that the Taxpayer had not supported its adjustments with relevant data. The comparable assessments were located outside of AREA 1. Based on its position regarding segregating property components, the County elected to address comparability between total assessments, and did not consider the equity between the improvements and land separately. The County had no evidence with respect to the total assessments for the comparable properties submitted by the Taxpayer, but rather submitted analysis of the comparables presented by the Taxpayer to the BOE. However, the County did provide comparable assessment information for two other properties within AREA 1. Following are the subject property and comparable assessments within AREA 1:

Property	BUILDING 1	BUILDING 2	BUILDING 3
Assessment	$$$$$	$$$$$	$$$$$
Total Size	974	2,380	2,876
$/ft^2	$$$$$	$$$$$	$$$$$
Yr. Built	1871	N/A	1871
Eff. Age	15	15	20
Quality	Avg.	Good	Avg.
Condition	Good	Good	Good
Stories	1	1	2
Basement	0	Full	0

The County also challenged the Taxpayer's comparable improvements. First the County argued that comparable # 1 was located in a transitional area from single family use to mixed use, located three blocks from AREA 1. That property was used for retail purposes, and had 1,496 sq. ft. on the first floor, with 828 sq. ft. on the second. It also had a full basement. The second comparable was in a mixed use neighborhood, and was used as an insurance office. It was 1,362 sq. ft. with a full basement. Comparable #3 was 1,349 sq. ft. on the main floor, with a full basement apartment. The County argued that the Taxpayer made no adjustments for these differences.

With respect to the land, the County argued that comparable # 1 was used for residential purposes, comparable # 2 was used as a dental office, and # 4 (neither party identified a # "3") was zoned residential with a use variance, as opposed to the commercial zoning for AREA 1.

ANALYSIS

In addressing the equalization of the subject property, the Commission first determines the issue of segregating property components into land and buildings for purposes of establishing equalization. With respect to the issue of the appropriate component of assessed value to compare, we have previously ruled on that issue. In Appeal No's. 09-3841 and 09-3842, we found specifically that "we do not disagree that a single component of an assessment, e.g. improvement, land, or site improvements might be compared independently . . . ." In support of its position, the Taxpayer cited three sources. First, the Taxpayer quoted Tax Commission Administrative Rule R884-24P-37.B., which provides that "[r]eal property appraisal records shall show separately the value of the land and the value of any improvements." Next, the Taxpayer cited a Utah Supreme Court decision, *West Side Property Associates vs. Salt Lake County* (2000), in which the Court stated "[l]and and improvements are recognized as separated constituents, and therefore, each element is subject to separated assessment and taxation." In that decision, the Court made reference to §59-2-102, which also distinguishes between real estate and improvements. We find that the legal authority provided by the Taxpayer, recognizing that *West Side* dealt with an escaped assessment, buttresses our original ruling in the prior appeals. We note further the cost approach itself segregates property value into land and improvements. The County's argument was that appraisal theory, principles of highest and best use, and USPAP require that property be valued as a unit. Therefore, according to the County, the appropriate basis to compare properties for equalization purposes is to compare the entire property, rather than the land and building separately. However, the County did not identify a single source appraisal text, nor was a specific part of USPAP identified.

Having made the general finding, however, we have considerable concerns regarding the Taxpayer's specific approach. The Commission is unaware of any appraisal principle that would allow for an improvement to be compared with other improvements, and then allow for comparisons of land based on different improved properties. Section 59-2-1006(4) of the Utah Code requires that "the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties." In this case the Taxpayer is seeking to equalize the total property assessment, even though the individual land and building components were segregated. If a party cannot not find comparable properties for land and improvements, it may be extremely difficult to make an equalization argument. We believe that it is questionable to use, for comparison purposes, land from one neighborhood and buildings from another. In that one respect, we find the assessor's position is reasonable; comparing inequities for land and improvements separately with each component from different neighborhoods and properties may distort the equalization analysis.

In addition to our concern with mixing and matching building and land assessments, we are concerned that, effectively, the Taxpayer only used three comparables to support the equalization argument. It is difficult to establish that properties are not equalized based on a limited number of comparables. Finally, we are concerned that the Taxpayer only used a single characteristic – size, as a basis for comparison

The County did not compare the subject property with any of the comparables presented for this hearing, but did make comparisons with other property within AREA 1. Although the subject property is assessed at a higher rate on a square foot basis than the other two properties, it has no basement and has no second story. Consequently it is difficult to determine whether or not the subject property has been over assessed compared to the other AREA 1 properties.

We find that neither party has put forth any kind of substantive analysis to support a value for the land or improvements. After considering the evidence placed before us, we find that the Taxpayer has neither called the assessed value into question, nor provided sufficient evidence to support a new value. In fact, it appears that the real issue is whether AREA 1 properties are equalized with similar use property outside of AREA 1. The only way to do that is to first establish the relationship between market values within AREA 1 and market values outside of market square. It is clear from the evidence that assessments, on a square foot basis, in AREA 1 are almost double those outside of AREA 1. What is not clear is whether those differences are due to location, property characteristics, and other market effects; or whether the differences are due to assessment inequities. If the Taxpayer could not find property within AREA 1; differences in location, physical characteristics, and market conditions should have been accounted for in comparing the subject assessments with assessments outside of AREA 1. This was not done. Nonetheless, with respect to the improvements, we are concerned that the County was unable to provide any basis to explain why the assessments in AREA 1 were so much higher than for any other improvement. Location alone is insufficient to explain extreme differences in value for improvements.

DECISION AND ORDER

Based on the forgoing, the appeal is denied. The assessment for both parcels is to remain as established by the County Board of Equalization.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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