

10-0326  
LOCALLY ASSESSED PROPERTY - COMMERCIAL  
TAX YEAR: 2009  
SIGNED: 08-19-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  BOARD OF EQUALIZATION OF COUNTY, UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 10-0326  Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2009  Judge: Cragun
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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:**

Michael J. Cragun, Commissioner

**Appearances:**

For Petitioners: PETITIONER REP., Taxpayer's Representative (by telephone)  
For Respondent: RESONDENT REP., COUNTY Assessor (by telephone)

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. The parties presented their arguments in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on May 18, 2010. Petitioner (the "Property Owner") appeals the assessed value established for the subject property by the COUNTY Board of Equalization as of the January 1, 2009 lien date. The County Assessor had set the value at \$\$\$\$ and the County Board of Equalization sustained that value. The Property Owners request a value reduction to \$\$\$\$\$. At the hearing, Respondent (the "County") requested that the Tax Commission sustain the value set by the County Board of Equalization.

During the hearing, the County's representative noted that the Property Owner's representative had supplied tax return information later than requested. Consequently, the County was unable to obtain income based valuation evidence from a more experienced appraiser who is employed by a sister county's assessor. The County asked that the hearing record remain open so that its income based valuation could be submitted the next day. The Property Owner's representative said that he could submit any response to the County's post-hearing evidence by May 26, 2010. The hearing officer agreed to keep the hearing record open until June 1, 2010. Both parties acknowledged the deadline.

The County submitted its evidence on May 19, 2010. When the Tax Commission's Appeals Unit contacted the Property Owner's representative after May 26, 2010, he said that he would like to respond to the County's evidence but was unaware of any time limits. He also said that he was traveling and would call the Appeals Unit back for further discussion. The Property Owner's representative has neither made further contact nor submitted any response.

#### APPLICABLE LAW

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. 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).

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 a ( # ) room lodging facility affiliated with COMPANY A, located in CITY, Utah. At the hearing, the Property Owner's representative presented an income statement reflecting estimated revenue of \$\$\$\$ for 2009. Based on the ratio of 2008 actual

revenues and expenses, the income statement calculates net operating income at 25% of total revenue or \$\$\$\$\$ for 2009. The 25% income ratio was based on an Income and Expense Statement (“income statement”) provided by the Property Owner’s representative. This document used figures derived primarily from the Property Owner’s federal income tax return. The Property Owner’s representative explained that the income statement uses 2009 revenue estimates rather than 2008 actual revenue because the Property Owner had experienced declining revenues over previous years and anticipated that trend to continue. The income statement then applies a %%% capitalization rate based upon a %%% rate derived from the Korpacz Real Estate Investor Survey plus an effective tax rate of %%%. This rate yields an estimated total property value of \$\$\$\$\$ from which the Property Owner subtracted personal property valued at \$\$\$\$\$, resulting in an estimated property value of \$\$\$\$\$. The Property Owner further reduced this value by 10% (\$\$\$\$\$) to account for “business enterprise value,” which the Property Owner’s representative explained as the lodging business’s franchise affiliation, market position, and working capital. Thus, the Property Owner’s requested value for the property is \$\$\$\$\$

The County’s representative testified at the hearing that rural Utah properties have experienced neither dramatic valuation increases nor valuation decreases due to economic fluctuations as has been the case elsewhere. The County’s representative opined that despite a national economic downturn in 2008 and 2009, properties in CITY, Utah have shown a steady increase in market value. While acknowledging limited commercial sales in the area, the County’s representative presented the following data to illustrate their premise by noting that the sales prices exceed the assessed values:

Sale Date	Sale Price	Assessed Value	Location	Notes
June 2007	\$\$\$\$\$	\$\$\$\$\$(2009)	ADDRESS 1	Subject property
June 2009	\$\$\$\$\$	\$\$\$\$\$ (2008)	ADDRESS 2	Lodging property
October 2008	\$\$\$\$\$	\$\$\$\$\$ (2008)	ADDRESS 3	Vacant land where COMPANY 2 was later constructed

The County’s representative further testified that the subject property’s 2010 valuation, based on Marshall and Swift cost data, will likely be \$\$\$\$\$. Finally, the County’s representative suggested that the subject property is located in CITY’s commercial growth area.

The Property Owner’s representative disputed the relevance of the property sales and assessment data as the additional lodging property and the vacant land are not comparable to the subject property. He further testified that the Property Owners purchased the subject property at

the peak of the market. Finally he questioned the County's 2010 cost approach valuation because it includes no depreciation for either base cost or heating and cooling.

Following the hearing, the County's representative submitted an income approach valuation. The County calculated the value by applying an %%% capitalization rate to net operating income of \$\$\$\$ yielding \$\$\$\$\$. The net operating income reflects income of \$\$\$\$ less expenses of \$\$\$\$\$. These figures were taken directly from the Property Owner's tax return. After subtracting \$\$\$\$ in "reported personal property value," the County concludes that the subject property's value is \$\$\$\$\$. The County's information does not explain the capitalization rate derivation or account for the difference between the personal property value it used and that relied upon by the Property Owner<sup>1</sup>.

The Commission has significant concerns over differences between the Property Owner's income statement and the tax return. Although some of the discrepancy resulted from offsetting adjustments by allocating salary expenses from "Rooms" to "Repairs and Maintenance" in the amount of \$\$\$\$\$; two other expenses had no explanation. First, "Marketing," which included "Advertising" and "Commissions" on the tax return, was in the amount of \$\$\$\$\$ on the income statement, but \$\$\$\$\$ on the return. This is a difference of \$\$\$\$\$. In addition, the income statement showed \$\$\$\$\$ for "Management Fee," but includes \$\$\$\$\$ within \$\$\$\$\$ of "Administrative & General" expenses. The tax return indentified the \$\$\$\$\$ figure as "Management Fees." The two unexplained discrepancies total \$\$\$\$\$, would account for a value difference of close to \$\$\$\$\$. The Commission notes that removing the unexplained adjustments to the expenses from the tax return results in a %%% income ratio as opposed to the %%% ratio used by the Property Owner.

We do not find the Property Owner's pro forma revenue estimate to be persuasive for several reasons. First, there was no evidence to support the testimony that revenues have been declining over the last several years. In any event, the County testified that the market had not experience any recent decline. We do note, however that the County's testimony was equally unsupported; the ratio of sales prices to assessments has nothing to do with market trends. Finally, the discrepancies between the Property Owner's reported expenses and those listed on the return raise concerns about the credibility of the revenue estimates.

For similar reasons, the Commission does not accept the Property Owner's estimate for Business Enterprise Value. There was no allocation of value between franchise affiliation, market position, and working capital, nor was there any support for the 10% figure. In particular,

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<sup>1</sup> At the hearing the parties' testimony reflected some misunderstanding among them between an amount the Property Owner's allegedly invested in new furnishings after purchasing the subject property, the portion of the subject property's purchase price allocated to personal property, the value reported on the Property Owner's personal property tax return and the value determined by a personal property tax audit.

working capital was improperly characterized and included with enterprise value. It has nothing to do with enterprise value; working capital is an accounting or financial measure used to determine the liquidity of a firm. Also, the testimony does not sufficiently describe why the subject property's valuation should exclude these particular elements.

Although a pro forma revenue and expense estimate of future income and expenses is an appropriate valuation methodology, the Property Owner's estimates were not well supported. Accordingly, the Commission finds that the actual income and expenses on the 2008 tax return are an acceptable approximation for the 2009 net operating income. After adjusting the County's estimate to reflect the audited personal property value, the resulting estimated value of \$\$\$\$ is higher than the current assessment.<sup>2</sup>

After weighing the evidence provided by both parties, the Commission concludes that the evidence supports the current assessment as set by the Board of Equalization. .

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the County Board of Equalization's determination that the value of the subject property as of January 1, 2009, is \$\$\$\$ . 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 \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

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<sup>2</sup> The Owner estimated \$\$\$\$ for "Reserve for Replacements. However neither party used this figure in developing their respective valuations.