

10-0783  
LOCALLY ASSESSED PROPERTY  
SIGNED 08-19-2010

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONERS,  Petitioners,  v.  BOARD OF EQUALIZATION OF DAVIS COUNTY, STATE OF UTAH,  Respondent.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>  Appeal No. 10-0783  Parcel No. ##### Tax Type: Property Tax / Locally Assessed Tax Year: 2009  Judge: Chapman
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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:**  
D'Arcy Dixon Pignanelli, Commissioner  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER REP. 1, Owner  
                  PETITIONER REP. 2, Witness  
For Respondent: PETITIONER REP. 3, Davis County Assessor  
                  PETITIONER REP. 4, from Davis County Assessor's Office  
                  PETITIONER REP. 5, from the Davis County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 20, 2010. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The tax year at issue is 2009, with a lien date of January 1, 2009.
3. At issue is the fair market value of 4.3 acres of vacant commercial land. The subject property is identified as Parcel No. #####.
4. The subject property is owned by PETITIONERS (“Petitioners” or “taxpayers”). The subject property is located at the corner of STREET 1 and STREET 2 in CITY, Utah.
5. The Davis County Board of Equalization (“County BOE”) sustained the \$\$\$\$ value at which the subject property was assessed for the 2009 tax year.
6. In a letter dated March 24, 2010, the taxpayers waived their right to an Initial Hearing at the Tax Commission.
7. The taxpayers ask the Commission to reduce the subject’s value to \$\$\$\$\$, which equates to approximately \$\$\$\$\$ per square foot. The County asks the Commission to sustain the subject’s current value of \$\$\$\$\$, which equates to approximately \$\$\$\$\$ per square foot.
8. The subject property is located adjacent to the ( X ) (“( X )”) in CITY and is zoned AP ( X ) (“AP zoning”). With an AP zoning, the subject may be used for purposes similar to those for which properties with “light industrial” zonings may be used. The County indicated that AP-zoned property is typically used for storage warehouses (i.e., ( X ) warehouses) and small office buildings.
9. The taxpayers contend that the subject property’s value is diminished for a number of reasons, including: 1) one-half of one acre of the parcel is affected by a 50-foot setback due to the subject property being located next to the ( X ); 2) one-half of one acre of the parcel cannot be developed because it is subject to a ( X ) easement; 3) the AP zoning provides for additional setbacks not required for other commercial properties; and 4) property values began to depreciate in 2007.

10. The taxpayers submitted evidence to show that the subject property was assessed at a value of \$\$\$\$\$ for tax years 2001 through 2007. They also showed that the subject's assessed value was increased to \$\$\$\$\$ for the 2008 tax year, which is also the subject's assessed value for the 2009 tax year.

11. The taxpayers submitted an exhibit in which it applied an "average annual appreciation" rate to the 2001 assessed value of \$\$\$\$\$ to derive a value for 2002 and each subsequent year through 2009. Using this methodology, the taxpayers derived a 2009 value of \$\$\$\$\$ for the subject property and ask the Commission to reduce the subject's value to this amount. The annual appreciation rate used in the methodology was determined by PETITIONER REP. 2, a real estate agent and mortgage broker, based on his own knowledge and on rates for residential properties (including multi-unit properties) that he obtained from the FHA.

12. The taxpayers also submitted evidence to show that property values, in general, decreased between 2006 and 2010. Specifically, the taxpayers submitted the sale of a single-family residence in CITY 2, Utah that sold in June 2006 for \$\$\$\$\$ and again in April 2010 for \$\$\$\$\$, which shows a reduction in value of 42.4%.

13. The taxpayers also assert that the subject's 2009 assessment is inequitable when compared to the assessments of other properties. The 4.3-acre subject property's assessed value for both 2008 and 2009 was \$\$\$\$\$, which equates to \$\$\$\$\$ per square foot or \$\$\$\$\$ per acre. The taxpayers submit three comparables that were assessed in 2008 for a lower amount per acre than the subject was assessed in 2008 or 2009, specifically:

a) a 10.13-acre parcel on the other side of the ( X ) that was assessed at \$\$\$\$\$ in 2008, which equates to \$\$\$\$\$ per square foot or \$\$\$\$\$ per acre. This property is also zoned AP, but, unlike the subject, does not sit on STREET 2. The County indicates that it assessed this property at \$\$\$\$\$ per square foot for the 2009 tax year due in part to it being contaminated and not being able to be built on.

Appeal No. 10-0783

b) a 7.00-acre parcel that was assessed at \$\$\$\$\$ in 2008, which equates to \$\$\$\$\$ per square foot or \$\$\$\$\$ per acre. This parcel is not located on STREET 2 and is not zoned AP. Neither party provided 2009 assessment information for this parcel; and

c) a 22.38-acre parcel that was assessed at \$\$\$\$\$ in 2008, which equates to \$\$\$\$\$ per square foot or \$\$\$\$\$ per acre. Neither party provided 2009 assessment information or an address for this parcel. This property is not zoned AP.

14. PETITIONER REP. 5, a certified general appraiser and employee of the County Assessor's office, signed an appraisal in which he estimated the subject's value to be \$\$\$\$\$ (\$\$\$\$\$ per square foot) as of the January 1, 2009 lien date. The County indicated that it was submitting the appraisal in support of the subject's current value of \$\$\$\$\$. The County did not ask the Commission to increase the subject's value.

15. In the County's appraisal, the subject property was compared to four comparables that sold between October 2007 and August 2008 for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per square foot. The comparables were adjusted to adjusted sale prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per square foot. The County "weighted" each comparable equally (i.e., averaged the four comparables' adjusted sales prices per square foot) and arrived at a value of \$\$\$\$\$ per square foot for the subject. The County's adjustments included a time adjustment to reflect commercial property values beginning to decrease in mid-2008.

16. None of the County's four comparables have the same AP zoning as the subject. The County states that it could not find any AP-zoned comparable sales. However, it asserts that the industrial-zoned comparables it used in the appraisal are similar in utility to the subject property. The County also asserts that these industrial properties, like the subject, have setback requirements and that it did not believe that the subject was less valuable due to the setback requirements specifically required for AP-zoned

properties. The County also did not believe that the location of the ( X ) easement over the subject property had a significant impact on its value, in part because no evidence was submitted to show that the easement prevented development and because a building on the adjacent lot is built over the pipeline.

17. The County also asserts that the subject property is not inequitably assessed. It submitted assessment information for a number of vacant lots also zoned AP, which like the subject are adjacent to the ( X ) and located on STREET 2. Except for properties on which standing water exists, the lots are assessed at \$\$\$\$\$ per square foot, which is greater than the \$\$\$\$\$ rate at the subject is assessed. Two lots with standing water on them are assessed at \$\$\$\$\$ and \$\$\$\$\$ per square foot. The County contends that the lots with standing water are inferior to the subject, which does not have standing water on it.

APPLICABLE LAW

1. UCA §59-2-103(1) provides that “[a]ll 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.”

2. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

(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. . . .

. . . .

(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.

. . . .

3. For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount proposed by the party. *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, (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 taxpayer submits both valuation and equalization arguments to contest the subject's current assessed value of \$\$\$\$\$. The arguments will be addressed separately.

Fair Market Value. The taxpayers' proposed value of \$\$\$\$\$ for the 2009 tax year is not convincing. The methodology used to derive this value is dependent on the "average annual appreciation" rate being correct for each year between 2001 and 2009. PETITIONER REP. 2 developed the rate for each year based on his own knowledge and on rates for residential properties obtained from the FHA. These rates, however, may not be applicable to vacant commercial land in CITY. The FHA rates would appear to be more applicable to improved residential properties. All properties do not appreciate at the same rates over the same period. Accordingly, applying "general" appreciation rates to a prior value for a particular property does not necessarily establish that property's value for a later period.

Furthermore, sales of other commercial properties in the southwestern portion of Davis County suggest that the subject's current value is reasonable and may even be low. The County provided an appraisal in which it compared the subject to vacant commercial land in the western portions of CITY 3 and CITY 4 that sold in late 2007 and 2008. The four comparables sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per square foot and adjusted to prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per square foot. The subject's

Appeal No. 10-0783

current value at \$\$\$\$ per square foot rate is significantly less than the lowest adjusted sales price of any of these comparables. The County has effectively argued that the subject's value might not be affected significantly by the setbacks required for AP-zoned properties or by the ( X ) easement. For these reasons, the subject's current value has not been shown to be incorrect.

The property was assessed at the same \$\$\$\$ value for both 2008 and 2009, even though the County admits that values dropped in 2008. If evidence had been provided to show that the subject's fair market value was \$\$\$\$ as of January 1, 2008, a downward adjustment for 2009 might be warranted. However, no convincing evidence was submitted to show what the subject's value was for 2008. The taxpayers assert that the 2009 value is incorrect. Similarly, the 2008 may have been incorrect. It could have even been too low. Without convincing evidence of the subject's value on January 1, 2008, however, no adjustment should be made because of the declining market. The County's appraisal more than supports the subject's current value of \$\$\$\$ for 2009.

Equalization. The taxpayer has not shown that the subject's fair market value, as of January 1, 2009, is less than its current value of \$\$\$\$. Nevertheless, the subject's value may be reduced if the evidence shows that subject's value deviates more than 5% from the values at which other comparable properties are assessed. Section 59-2-1006(4)(b). *See also Rio Algom Corp. v. San Juan County*, 681 P.2d 184 (Utah 1984), in which the Utah Supreme Court found that even though a property's assessed value may properly represent its "fair market value," the assessed value should be reduced to a value that is uniform and equitable if it is higher than the values at which other comparable properties are assessed.

The subject's current value of \$\$\$\$ equates to \$\$\$\$ per acre. The taxpayers contend that the subject's value is inequitable when compared to the value per acre at which three nearby properties were assessed in 2008. The three comparables are assessed in 2008 at \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per acre. However, the taxpayers' equalization argument is not convincing. First, the taxpayers presented no 2009

Appeal No. 10-0783

information to show whether the subject's value is inequitable when compared to the values at which other properties were assessed in 2009.

Second, it appears that the subject property may be superior to the three properties for which the taxpayers provided information for the 2008 tax year. The parcel that was assessed at \$\$\$\$ per acre in 2008 appears to be contaminated, at least in part. There was no suggestion that the subject property was contaminated. In addition, it does not appear that any of the taxpayers' comparables are located on STREET 2, a four-lane highway with significant traffic. Furthermore, two of the three comparables do not have the same zoning as the subject.

Third, the County submitted 2009 assessment information for a number of AP-zoned lots located on STREET 2. They are assessed at values in excess of the value at which the subject was zoned, with the exception of two lots that have water issues. Given this evidence, the taxpayers have not shown that the subject's current value of \$\$\$\$ is inequitable for the 2009 tax year.

#### CONCLUSIONS OF LAW

1. The taxpayers have not submitted convincing evidence to show that the subject's current value of \$\$\$\$ is incorrect for the 2009 tax year, under either a fair market value argument or an equalization argument.
2. The subject's 2009 value of \$\$\$\$ should be sustained.

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Kerry R. Chapman  
Administrative Law Judge

#### DECISION AND ORDER

Based upon the foregoing, the Commission finds that the subject's current value of \$\$\$\$ should be sustained for the 2009 tax year. It is so ordered.

Appeal No. 10-0783

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 et seq. and 63G-4-401 et seq.

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