

10-1808  
LOCALLY ASSESSED COMMERCIAL PROPERTY  
TAX YEAR: 2009  
SIGNED: 08-27-2012  
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  vs.  SALT LAKE COUNTY, OF THE UTAH STATE TAX COMMISSION  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 10-1808</p> <p>Parcel No. #####-1 Tax Type: Property Tax Tax Year: 2009</p> <p>Judge: Marshall</p>
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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. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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:**

R. Bruce Johnson, Commissioner  
Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, Owner  
PETITIONER REP., Real Estate Agent  
For Respondent: RESPONDENT REP., Appraiser for Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 23, 2011, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer is appealing the assessed value of the subject property located in Salt Lake County, Utah.
2. The Salt Lake County Assessor’s Office assessed the subject property at \$\$\$\$ as of the January 1, 2009 lien date, which the Board of Equalization sustained.
3. The County’s representative asked the Commission to sustain the Board of Equalization value.
4. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$.
5. The fair market value of the subject property is \$\$\$\$ as of the January 1, 2009 lien date.
6. The subject property is parcel no. #####-1, located at ADDRESS 1. It is a 1.18-acre parcel improved with two duplexes built in 1973.
7. The Taxpayer collects monthly rents that range from \$\$\$\$ to \$\$\$\$ per unit.
8. Taxpayer testified that there is no curb-cut access on the west side of the property; that the parking sits five or six feet below street level; and that the lot floods because of the lack of curb and gutter.
9. In support of his requested value, the Taxpayer submitted the following comparable sales (Exhibits P-1 through P-5):

	Subject	Sale #1	Sale #2	Sale #3	Sale #4	Sale #5
Address	ADDRESS 1	ADDRESS 2	ADDRESS 3	ADDRESS 4	ADDRESS 5	ADDRESS 6
Lot Size	1.18	0.90	0.36	1.75	1.16	0.90
Square Feet	1,662/duplex	1,614		5,904	1,740	1,527
Basement	1,662/duplex	1,334		2,664	1,012	1,427
Sales Date		8/12/09	3/24/09	12/30/08	11/9/09	9/9/09
Sales Price		\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$

10. The Taxpayer’s sales were a vacant lot and four single family residential properties. All but one of the comparables sold post lien date, and that comparables one and two were bank-owned sales.
11. The County’s representative determined a total value of \$\$\$\$ for the subject property. He arrived at a value of \$\$\$\$ for the duplexes using an income approach and an additional \$\$\$\$ for the excess land based on comparable sales.
12. The County submitted the following three duplex sales (Exhibits R-1 through R-3):

	Subject	Sale #1	Sale #2	Sale #3
Address	ADDRESS 1	ADDRESS 7	ADDRESS 8	ADDRESS 9
Lot Size	1.18	0.25	0.18	0.32
Square Feet	1,662/duplex	2,500	2,400	4,704
Basement	1,662/duplex			
GRM		164	136	145
Sales Date		2/27/09	6/11/08	9/19/08
Sales Price		\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

13. No comparison was made to determine whether the sales prices reflect the value of the subject property.
14. The County used rents of \$\$\$\$\$ per unit and a GRM of ##### to arrive at a combined value of \$\$\$\$\$ for the duplexes. He stated a GRM of between ##### and ##### is typical, and bracketed by the sales he submitted.
15. The improvements on the subject property sit on the east side, and the west side of the property is undeveloped. (Exhibit R-4).
16. The subject property is zoned R-1-10, meaning there is a minimum lot size requirement of 10,000 square feet. (Exhibit R-5).
17. It is the County's position that the highest and best use of the property is to subdivide the subject property into at least two additional 0.25-acre lots.
18. The County submitted four land sales of lots between 0.22 and 0.32-acres in size. The lots sold between September 11, 2009 and April 1, 2010, with sales prices ranging from \$\$\$\$\$ to \$\$\$\$\$. (Exhibits R-6 through R-9).
19. The low end of the lot values is \$\$\$\$\$. The County applied a 30% deduction for the costs of development, which would support a value of \$\$\$\$\$ for the excess land.

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.

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 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).

#### CONCLUSIONS OF LAW

In seeking a value other than that established by the board of equalization, a party has the burden of proof to 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.

Neither party presented sufficient evidence to sustain their respective burdens in support of their specific value estimates. The Taxpayer’s sales, four single-family residences and one vacant lot, are not “comparable” to the subject property, a lot improved with two duplexes. The County’s overall approach, however, was better supported than the Taxpayer’s in both the analysis and market information. Nothing in the County’s information, however, tied in with the assessment of \$\$\$\$\$. The County submitted an income approach for the duplex units that came in at a value of \$\$\$\$\$. The County also submitted evidence of the residential building lots with a low-end sales price of \$\$\$\$\$ for a quarter acre lot, and testified that a 30% adjustment for development costs would be appropriate. The resulting value would be \$\$\$\$\$. With an additional \$\$\$\$\$ for the land, the total value would \$\$\$\$\$.

The County’s argument that the highest and best use is to develop the remaining land into at least two other lots is persuasive. No direct market information was submitted by either party that would indicate the value of excess land. Although the Taxpayer included a vacant lot with his comparable sales, he has not presented any methodology to value the excess land, nor did he appear to even recognize that there was additional value in the land. The County’s implied comparable lot sales approach is an acceptable methodology for determining the excess land value if appropriate adjustments are made. The County, however, failed to address a critical factor in estimating the excess land value; the subject could not be sold as two separate developable parcels as of the lien date. A willing buyer would only be able to purchase, and the Taxpayer would only be able to sell, a single parcel with excess land; not a developed, improved lot plus two undeveloped lots. For this reason, the Commission is not persuaded that the County properly accounted for an as-is sale of the property as of the lien date. In the absence of specific market information, the Commission will apply an additional 10% adjustment to the County’s implied excess land value of \$\$\$\$\$. With this adjustment, the value of the 0.50-acres of excess land would be \$\$\$\$\$; which added to the \$\$\$\$\$ value for the duplexes, results in a value of \$\$\$\$\$ for the subject property.

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2009 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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.