

10-2103  
LOCALLY ASSESSED COMMERCIAL PROPERTY  
TAX YEAR: 2009  
SIGNED: 03-10-2011  
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN  
EXCUSED: D. DIXON

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No.    10-2103  Parcel No.    11 Parcels (See Attachment A) 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:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER REP. 1, Representative  
                    PETITIONER REP. 2, Representative  
For Respondent:    PETITIONER REP. 2, from Salt Lake County Assessor's Office

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 March 1, 2011.

At issue are the fair market values of 11 commercial retail parcels that comprise the SHOPPING CENTER, which is located at ADDRESS 1 (STREET) in CITY 1, Utah. The Salt Lake County Board of

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Equalization (“County BOE”) sustained the value at which each of the subject properties was originally assessed for 2009, as shown on the following chart:

<b>Parcel No.</b>	<b>County BOE Value</b>
#####-1(“Parcel #####-1”)	\$\$\$\$\$
#####-2(“Parcel #####-2”)	\$\$\$\$\$
#####-3(“Parcel #####-3”)	\$\$\$\$\$
#####-4 (“Parcel #####-4”)	\$\$\$\$\$
#####-5(“Parcel #####-5”)	\$\$\$\$\$
#####-6(“Parcel #####-6”)	\$\$\$\$\$
#####-7 (“Parcel #####-7”)	\$\$\$\$\$
#####-8 (“Parcel #####-8”)	\$\$\$\$\$
#####-9 (“Parcel #####-9”)	\$\$\$\$\$
#####-10 (“Parcel #####-10”)	\$\$\$\$\$
#####-11 (“Parcel #####-11”)	\$\$\$\$\$
Total	\$\$\$\$\$

The County asks the Commission to sustain the values established by the County BOE, which total \$\$\$\$\$ for the 11 parcels. The taxpayer asks the Commission to reduce the total value of the 11 parcels to \$\$\$\$\$ and to allocate the total value among the 11 parcels based on the square footage of the improvements on each parcel.

APPLICABLE LAW

Utah Code Ann. §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.”

UCA §59-2-1006(1) provides that “[a]ny 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 . . . .”

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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 11 subject properties comprise the SHOPPING CENTER. The improvements on the parcels were built between 1998 and 2000, with the exception of the improvements on Parcel #####-10, which were built between 2003 and 2005. The parties stipulated that the improvements on all 11 subject parcels totaled 174,782 square feet. In 2008, the taxpayer indicates that 12.5% of the shopping center was vacant, including the 15,069 square-foot store on #####-5, which had previously housed a COMPANY 1 and which has been vacant for nine years. The taxpayer also indicated that COMPANY 2 grocery store, which leased the 57,231 square foot store on Parcel #####-4, gave notice in 2009 (after the lien date) that it was going to leave the shopping center. COMPANY 2 vacated the store in 2010.

The parties disagree on whether the 11 parcels should be considered an economic unit and valued with a single income approach. The County contends that each parcel should be valued with a separate income approach because each parcel has access to one of the roads on either side of the shopping center and can be separately owned. The taxpayer, however, argues that the shopping center should be valued as an economic unit because it is operated as a unit by the management company hired to manage the shopping center and because they are owned by the same owner. The taxpayer also believes that covenants exist that preclude the owner selling an individual parcel.

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The taxpayer's income approach is based on the total actual income, actual vacancy and actual expenses for the 11 parcels. The taxpayer used actual rents and revenues (minus actual vacancy of 12.5%) to arrive at total revenue of \$\$\$\$\$. As a whole, the taxpayer's actual 2008 rental rates, as shown on a January 1, 2009 rent roll, are "in-line" with market rents proposed by the County in its individual income approaches for the subject parcels. To the taxpayer's total revenue of \$\$\$\$\$, it deducted another 10% (\$\$\$\$\$) for market vacancy and \$\$\$\$\$ for expenses to arrive at net operating income ("NOI") of \$\$\$\$\$. The taxpayer capitalized the NOI of \$\$\$\$\$ at %%% to arrive at its proposed value of \$\$\$\$\$.

The taxpayer's income approach needs to be revised. The taxpayer's revenue already reflects the actual vacancy of 12.5% that existed in 2008. The taxpayer's deduction of another 10% (\$\$\$\$\$) for market vacancy is unsupported and appears to be an error. If the taxpayer's income approach is adjusted to remove the additional 10% of market vacancy, the taxpayer's revised NOI would be \$\$\$\$\$.

Remaining at issue is whether it would be more appropriate to capitalize the revised NOI at %%%, as the taxpayer proposes, or at %%%, as the County proposes. Capitalizing the \$\$\$\$\$ at %%% would result in a total value for the 11 parcels of \$\$\$\$\$, which is lower than their current total value of \$\$\$\$\$. Capitalizing the \$\$\$\$\$ at %%% would result in a total value for the 11 parcels of \$\$\$\$\$, which is higher than their current total value of \$\$\$\$\$. Capitalizing the \$\$\$\$\$ at %%% would result in a total value that approximates the current total value of \$\$\$\$\$.

The taxpayer stated that it reviewed two reports that showed that capitalization rates for shopping centers in the Salt Lake market had increased in 2009 to a range between %%% and %%%. For this reason, the taxpayer believes that its proposed capitalization rate of %%% is reasonable. However, the taxpayer did not provide the reports so that it could be determined if these rates were more appropriate for the beginning, the middle, or the end of 2009. In addition, the County submitted information from Commerce CRG indicating that the average capitalization rate for retail properties in the Salt Lake market was %%%

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for year-end 2008. Furthermore, the County submitted six capitalization rate comparables of shopping centers that sold along the Wasatch front in 2008 and 2009. The rates appear to show two separate groups of capitalization rates, one group of rates ranging between 8% and 10% for newer shopping centers (i.e., built in 1989 or newer) and another group of rates ranging between 6% and 8% for older shopping centers (built between 1965 and 1970).

The improvements on the 11 subject parcels were built between 1998 and 2005. As a result, it appears that a capitalization rate at 8% or below could be supported. The taxpayer indicates that the subject property has experienced some difficulty since the SHOPPING CENTER 2 shopping center opened. The 10% rate proposed by the County is higher than the rates at which shopping centers of similar age sold and would appear to account for these difficulties. None of the comparables support the taxpayer's proposed 10% rate. As mentioned earlier, applying an 8% capitalization rate to the taxpayer's revised NOI of \$1,000,000 results in a total value of \$1,250,000 for the 11 parcels, approximately 500,000 higher than their total current assessment of \$750,000. The County, however, does not ask the Commission to increase the values of the subject properties. The County asks the Commission to sustain the current values. On this basis, the current values of the 11 subject parcels, which total \$750,000, should be sustained.

It is noted that the County's individual income approach for each parcel uses market rents derived, in many instances, from properties in other shopping centers. There is a concern as to whether the County's rental comparables are located in shopping centers where the stores, like the subject properties, are segregated into individual parcels. If not, the County's approach may be questionable. However, this concern need not be addressed in this decision because the taxpayer's approach, once revised, supports the total value of the 11 parcels and because the County does not ask the Commission to adjust the value of any one subject parcel. For these reasons, the current assessed value of each subject parcel should be sustained.

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Kerry R. Chapman, Administrative Law Judge  
DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the current County BOE value for each of the 11 subject properties should be sustained for the 2009 tax year. It is so ordered.

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 taxpayer'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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**ATTACHMENT A**

**11 Subject Parcels Under Appeal**

**Parcel No.**

#####-1

#####-2

#####-3

#####-4

#####-5

#####-6

#####-7

#####-8

#####-9

#####-10

#####-11