

10-3012  
LOCALLY ASSESSED COMMERCIAL PROPERTY  
TAX YEAR: 2010  
SIGNED: 01-20-2012  
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  vs.  BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 10-3012  Parcel No's. #####-1 and #####-2 Tax Type: Property Tax/Locally Assessed Tax Year: 2010  Judge: B. Johnson
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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:**

Bruce Johnson, Commission Chair  
Marc Johnson, Commissioner

**Appearances:**

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

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the RURAL COUNTY Board of Equalization ("the County"). This matter was argued in an Initial Hearing on August 3,

2011 in accordance with Utah Code Ann. §59-1-502.5. The RURAL COUNTY Assessor's Office valued the subject property as of the January 1, 2010 lien date as follows:

Parcel #####-1 ("#####-1")	\$\$\$\$
Parcel #####-2 ("#####-2")	\$\$\$\$

Those values were sustained by the Board of Equalization ("BOE"). The County is asking the Commission to sustain the existing assessments. The Taxpayer is requesting the value of the subject property be reduced as follows:

Parcel #####-1	\$\$\$\$
Parcel #####-2	\$\$\$\$

In addition, the Taxpayer requested that Parcel #####-3 ("#####-3) be included in the appeal. The requested value for this property is \$\$\$\$\$. According to testimony,<sup>1</sup> the original assessment was \$\$\$\$\$, which was reduced by the BOE to \$\$\$\$\$.

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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<sup>1</sup> No tax record was provided, and no record of an appeal to the BOE was submitted.

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).

#### DISCUSSION

Before deciding the valuation issue, we first rule on the matter of the third property, Parcel #####-3. The County testified that no appeal had been filed for Parcel #####-3. As a matter of record, no appeal for Parcel #####-3 has been received or processed for #####-3 by the Tax Commission, nor did the Taxpayer provide evidence that this specific parcel had been appealed to the Tax Commission or the County BOE. Accordingly, the assessment and valuation of Parcel #####-3 will not be considered. However, the Tax Commission may consider the effect or influence of Parcel #####-3 on the other two properties, Parcel's #####-1 and #####-2, in terms of any geographic, functional, and economic relationships between all three properties.

The physical characteristics of the subject properties are taken from the County's reports submitted at the hearing. The subject properties are located at ADDRESS in CITY 1, Utah. STREET 1 is a major commercial corridor that runs from an exit on I-15 to STREET 2, which is the primary commercial corridor in CITY 1. The properties are located in a Highway Service (HS) zone. Parcel #####-1 is an 868 sq. ft. structure that was originally designed as a single family residence and was being used as a commercial property as of January, 2011. It sits on a 0.11-acre parcel of land. Parcel #####-2 consists of two buildings; one was constructed as a 562 sq. ft. bungalow style single family residence, similar to that on Parcel #####-1; the other appears to have been designed as a single unit apartment building. It is 472 sq. ft. in size. Both are being rented out as one bedroom apartments. Parcel #####-2 is also 0.11 acres in size. According to the Taxpayer, Parcels #####-1 and #####-2 share a common driveway and parking for all three parcels is shared. An addition for Parcel #####-3 encroaches on Parcel #####-2. According to the Taxpayer, there are no shared easements on the Trust deeds. Because of these problems, the Taxpayer argued that all three properties need to be under single ownership.

The Taxpayer purchased the property at an auction for a trustee's sale on January 22, 2010; three weeks after the lien date. The sales prices were \$\$\$\$ for Parcel #####-1 and \$\$\$\$ for Parcel #####-2.<sup>2</sup> The Trustee's sale was announced by posting at the Treasurer's no less than twenty days before the sale, and published in a local newspaper once a week for three weeks prior to the sale.

The Taxpayer also submitted an appraisal report, which represented the market value of the interest of the leased fee estate for all three parcels and all four buildings, together as a single economic unit, to be \$\$\$\$ as of June 9, 2011. The three parcels were also valued separately for a total combined amount of \$\$\$\$\$. The appraisal date is 1-1/2 years after the lien date. Accordingly, the appraisal will be given little, if any weight, other than to the extent any market and property data is relevant for the January 1, 2010 lien date.

The highest and best use was reported to be consistent with the current improvements, which are a legal non conforming use due to the lack of parking that would be required under the present zoning. The appraiser concluded that the lack of adequate parking results in functional obsolescence. The income approach was based on the actual total rent, which was compared with, and found to be consistent with current market rents. The income approach considered the leases of each of the four buildings, but ultimately used the total rent and total estimated expenses in a combined estimate on net operating income, arriving at a single estimate of value. Although it is theoretically possible to allocate the expenses, and estimate values for each property, we decline to do so. Furthermore, the market data was considered to be as of the appraisal date, and therefore, not relevant to fair market value as of the lien date. The Commission gives no weight to the Taxpayer's income approach.

The Taxpayer's appraisal also established a value for each parcel, based on the sales comparison approach. The appraiser identified four comparable sales, all of which were adjusted to, and used to estimate the value for each individual parcel. The sales are described as follows:

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<sup>2</sup> Parcel #####-3 had previously been purchased on October 1, 2009 for \$\$\$\$.

<u>Comp. #</u>	<u>Date</u>	<u>Location</u>	<u>Sales Price</u>	<u>Description</u>
1.	12/18/08	ADDRESS 3	\$\$\$\$	11,900 sq. ft. retail/office bldg. Used as a bank. 0.60 acres
2.	12/29/10	ADDRESS 4	\$\$\$\$	2,400 sq. ft. single tenant retail/warehouse. 0.31 acres
3.	02/24/11	ADDRESS 5 CITY 2, COUNTY 2	\$\$\$\$	Residence converted to office bldg. Est. 1,200 sq. ft. 0.45 acres
4.	06/16/10	ADDRESS 6 CITY 2, COUNTY 2	\$\$\$\$	2,722 sq. ft. office bldg. 0.99 acres, three parcels

Of the four comparables, two, #'s 3 and 4 were located in a different county. Comparable 3 was the only residential conversion, but, in addition to the location problem, sold six months after the lien date. Comparable sale #2 sold one year after the lien date, and is not indicative of market value on January 1, 2010. Comparable #1 sold near the lien date. However, at 11,900 sq. ft., compared to 868 sq. ft. and 1,032 sq. ft. for parcels #####-1 and #####-2 respectively, this sale is not reliable as an indication of value. Furthermore, this building was designed as an office building. Finally, in conjunction with these problems, we are not persuaded that a \$\$\$\$ sale can be accurately rendered into an estimated adjusted sale price of around \$\$\$\$. For all of these reasons, including the date of the appraisal, we do not give any weight to the comparable sales approach, or to the appraisal in its entirety with one exception. That is the lack of adequate parking.

The County submitted two documents, each of which was titled "Residential Appraisal Report." They were unsigned, had no certification, and had no estimate of value. Each document stated "[t]his grid is prepared only as support for the values placed on the assessment roll ...." Accordingly, the grids constitute neither an appraisal nor an appraisal report. Furthermore, the County stated that comparables were not used to establish value, but were used to support the assessments. However, the County did estimate an adjusted sales price for each comparable sale. The same five comparables sales were identified and used for both parcels. They are as follows:

<u>Comp. #</u>	<u>Date</u>	<u>Location</u>	<u>Sales Price</u>	<u>Description</u>
1.	06/18/09	ADDRESS 7 CITY 1	\$\$\$\$\$	1,016 sq. ft. SFR 0.20 acres R-2 Zoning
2.	10/01/09	ADDRESS 8 CITY 1	\$\$\$\$\$	832 sq. ft. SFR 0.23 acres R-2 Zoning
3.	04/28/09	ADDRESS 9 CITY 1	\$\$\$\$\$	1,250 sq. ft. 0.19 acres R-2 Zoning
4.	10/19/09	ADDRESS 10 CITY 1	\$\$\$\$\$	840 sq. ft. SFR .16 acres R-2 Zoning
5.	03/05/09	ADDRESS 11	\$\$\$\$\$	1,078 sq. ft. SFR 0.48 acres GC Zoning

The adjusted sales prices ranged from \$\$\$\$\$ (#3) to \$\$\$\$\$ (#2) for Parcel #####-1. The range for Parcel #####-2 was \$\$\$\$\$ to \$\$\$\$\$, again for comparable #'s 3 and 2 respectively. The most noticeable adjustments were \$\$\$\$\$ for zoning, applied to all five comparable sales. The County made no adjustment for lot size, other than comparable # 5, which was given a negative \$\$\$\$\$ adjustment. This is noteworthy because, the other comparables were 1-1/2 to 2 times the size of the subject properties. Parcel #####-2 consists of two separate buildings, but the County considered just the total size in comparing them with single buildings. The County also failed to address the obvious functionality problems associated with the parking and encroachments. We are also concerned that none of the County's comparables were in a similarly zoned neighborhood as the subject. Accordingly, because of these concerns, we give little weight to the adjusted sales prices of the comparable sales.

The evidence shows that if each parcel, including Parcel #####-3, were sold separately, to different owners, at least one, if not all, of them would require, at the minimum, some kind of easements, and more likely, changes to the legal descriptions, if possible.

The County also submitted an appraisal report for a commercial property that is located on STREET 3 one block from the subject properties. The report was dated July 15, 2010, and had an estimated value of \$\$\$\$\$ for an 1,800 sq. ft. building. Although the appraisal had no relevance to the subject properties, we note that at \$\$\$\$\$ per sq. ft., the appraisal would support a reduction in the assessments of the subject properties. Parcel #####-1 is assessed at \$\$\$\$\$ per sq. ft., and Parcel #####-2 is assessed at \$\$\$\$\$.

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.

Although the subject properties sold at a Trustee’s auction three weeks after the lien date, this is the only valid hard evidence of market value placed before the Commission. The Taxpayer’s appraisal is given no weight, and the County’s comparable sales are not dispositive for determining fair market value. Nor are the County’s comparable sales sufficient to support the assessments. The actual sales are supported by the sale of Parcel #####-3, which occurred prior to the lien date. The actual sales were noticed on or about the lien date. The properties were purchased by a single owner and were previously owned by a single owner. The County failed to address the problems associated with the parking restrictions and easements.

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$ for Parcel #####-1, and \$\$\$\$\$ for Parcel #####-2 as of the January 1, 2010 lien date. The RURAL COUNTY Auditor is hereby ordered to adjust its records accordingly.

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 \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D’Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner