

11-979  
LOCALLY ASSESSED PROPERTY - COMMERCIAL  
TAX YEAR: 2010  
SIGNED: 08-25-2011  
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER 1 AND PETITIONER 2,  Petitioners,  vs.  BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,  Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 11-979</p> <p>Parcel No. #####-1 Tax Type: Property Tax/Locally Assessed Tax Year: 2010</p> <p>Judge: Phan</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. 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:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP.  
PETITIONER 1  
PETITIONER 2

For Respondent: RESPONDENT REP., Certified General Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner (the "Property Owner") appeals the decision of the Salt Lake County Board of Equalization ("the County") pursuant to Utah Code §59-1-1006. This matter was argued in an Initial Hearing on June 7, 2011, in accordance with Utah Code Ann. §59-1-502.5. The Salt Lake County Assessor's Office had originally valued the subject property at \$\$\$\$ as of the January 1, 2010 lien date. The County Board of Equalization sustained the value. The Property Owner

requests that the value be lowered to \$\$\$\$\$. The County submitted an appraisal that indicated a value of \$\$\$\$\$ for the subject property but recommended at the hearing that the value remain as set by the County Board at \$\$\$\$\$.

APPLICABLE LAW

All 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. (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).)

(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 . . . . (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. . . . (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

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).

DISCUSSION

The subject property is parcel #####-1, located at ADDRESS 1, CITY 1 Utah. It is 1.27 acres of land improved with a metal manufacture/warehouse building that has 6,000 square feet. The property is zoned M1-Light Industrial. The building was constructed in 1997. There is a 385 square foot office in the building and the building has both heat and plumbing. The land to building ratio is fairly high, at 9.22. However, the Property Owner’s current tenant, a ( X ) business, is able to use the outside area for storage and for trucks to come in and load the product and turn around.

The Property Owners asked that the value be lowered to \$\$\$\$\$, which had been the assessed value set by the County for the 2009 tax year. It was their position that property values in general had declined from 2009 to 2010, so they did not understand why their assessed value should increase by \$\$\$\$\$ during this one year period.

The Property Owners explained that with their current tenant, the lease rate is only \$\$\$\$\$ per square foot or \$\$\$\$\$ per year. The tenant also pays utilities. The County considered the lease to be a triple net lease. It was the Property Owner's position that they could not get any higher rent for the property.

Additionally, the Property Owners argue that the County had not increased the assessed value of most of the neighboring properties, so the increase to their property seemed unfair. Their representative had taken a look at the assessed value of approximately 150 parcels in the area with the history of increase or decrease in value. Of these properties most values had remained unchanged from 2009 to 2010.<sup>1</sup> Approximately 26 of the values had decreased, but many of the decreases were small amounts. For instance A-1 Pallet, parcel #####-2 , had decreased from \$\$\$\$\$ to \$\$\$\$\$. For approximately 32 of the parcels, including the subject, the County's assessed values increased from 2009 to 2010. The exhibit did not include the percentage increase or decrease between tax years 2009 and 2010. The Representative explained that she had looked at the 13 parcels located nearest to the subject and of these parcels the largest increase from 2009 to 2010 was the subject parcel's increase by \$\$\$\$\$. She points out that the adjacent parcel to the east's value had not changed since 2004, although this was an exempt parcel. The parcel directly to the west of the subject the value had decreased. Of the 13 nearest comparables there were 7 that did not change in value and four were increased by small amounts.

The representative for the County did explain that exempt properties may not be appraised as frequently as the non-exempt because no property tax was paid regardless of the value. He also indicated that there were significant differences between many of these equalization comparables and the subject property. Further, as noted in the Property Owner's exhibit, the value of the subject property had been lowered from \$\$\$\$\$ in 2008 to \$\$\$\$\$ in 2009. The subject may just have been undervalued in 2009.

The County submitted an appraisal prepared by RESPONDENT REP., Certified General Appraiser. It was RESPONDENT REP.'s conclusion that the value of the subject property as of

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<sup>1</sup> In the exhibit submitted by the Property Owners in this appeal, it appears that there was an error in labeling the columns. The column labeled 2008 was really 2009 assessed values. The column labeled 2009 appears to be 2010 assessed values.

January 1, 2010, was \$\$\$\$\$. In reaching this value conclusion he asserted that the Property Owners' current lease rate at \$\$\$\$\$ was a below market rent. He asserted that market lease rate was \$\$\$\$\$ per square foot. He did look at five rent comparables in reaching this conclusion. He also looked at comparable sales. He found four comparable properties that had sold in a range from \$\$\$\$\$ to \$\$\$\$\$ per square foot. After making appraisal adjustments it was his conclusion that the indicated range for the subject from these sales had been \$\$\$\$\$ to \$\$\$\$\$ per square foot. It was his appraisal conclusion that the value of the subject would be \$\$\$\$\$ per square foot or \$\$\$\$\$.

After reviewing the evidence submitted in this matter by both parties, the value for the subject should remain at \$\$\$\$\$ as set by the County Board of Equalization. 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 fair market value as of January 1 of the tax year at issue under Utah Code §59-2-103. Utah Code §59-2-102 defines "fair market value" as the amount for which property would exchange hands between a willing buyer and seller. In this case the strongest evidence on the fair market value was offered by the County with its appraisal.

Utah Code §59-2-1006(4) does provide an alternative for lowering the value based on equalization. The Property Owners' argument was primarily equalization, that the subject should not be raised when neighboring property values remained unchanged or had decreased. However, despite the large number of parcels reviewed, the evidence is insufficient to establish a lower value based on equalization. Under Utah Code §59-2-1006(4) the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if 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. To make a showing, the Property Owner would have to show that neighboring comparable properties, for example other M-1 zoned metal buildings similar in size and acreage with similar access and visibility are valued less than the subject. Additionally, when a property owner is arguing for a reduction based on equalization of property values it is insufficient to show that there are some other parcels in the County that are valued lower. A property owner must show that comparable properties are valued lower and that there are multiple unfairly advantaged properties. See *Mountain Ranch Estates v Utah State Tax Commission*, 100 P.3d 1206, 1210 (Utah 2004). In this case the Property Owner has not shown that any comparable properties were valued lower than

the subject. They have shown only that a variety of different types of properties in the area had a variety of different outcomes in the 2010 assessed value compared to the 2009 assessed value.

The Commission should sustain the value set by the County Board of Equalization.

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Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$, as of the January 1, 2010 lien date. 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 \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner