

11-2163
TAX TYPE: PROPERTY TAX
TAX YEAR: 2010
DATE SIGNED: 7-19-2013
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 11-2163 Parcel No. ##### Tax Type: Property Tax Tax Year: 2010 Judge: Marshall
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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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Attorney for Petitioner
For Respondent: REPRESENTATIVE FOR RESPONDENT, Salt Lake County
District Attorney
RESPONDENT, Appraiser for Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 18, 2013, 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. The Petitioner (“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, 2010 lien date, which the Board of Equalization sustained.
3. The County is asking 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 subject property is parcel no. #####-1, located at ADDRESS-1 in CITY-1. It is a #####-acre parcel improved with a twenty-two year old building with a concrete exterior. The building has ##### square feet, and is a rental Class B office. (Exhibit 1).
6. The County valued the total property using an income approach. Once the total value was determined the County determined the land value and allocated the remaining value to the improvements.
7. The Taxpayer’s appeal is based on an equalization argument, and does not contest that the assessed value represents the market value of the subject property.
8. The Taxpayer and the County submitted information on what they believed were all of the parcels in the subject property’s neighborhood, identified as “Neighborhood #####” by the County. (Exhibits P-14 and R-6). On May 10, 2013, the parties jointly submitted a request to supplement the record to include the parcels located in Neighborhood ##### that were not included in Exhibits P-14 and R-6.
9. The Taxpayer’s equalization approach looks at the land and improvement values separately, and does not address the total assessed value. The Taxpayer’s representative prepared three separate methodologies to compare the subject properties land value to the land value of other properties located in Neighborhood #####.
10. The Taxpayer’s first methodology compares the assessed land value of the subject to all parcels in Neighborhood ##### that are between ##### and #####-acres, excluding properties located on STREET and a county-owned parcel. The Taxpayer’s representative determined that the subject land was valued at \$\$\$\$ per square foot while the median value of the comparables was \$\$\$\$ per square foot and the mean was \$\$\$\$ per square foot. (Exhibit 1A).

11. The Taxpayer's second methodology compares the assessed land value of the subject to all of the parcels in neighborhood ##### that are between ##### and #####-acres, again excluding the properties located on STREET and a county-owned parcel. The Taxpayer's representative determined that the subject land was valued at \$\$\$\$\$ per square foot while the median of the comparables was \$\$\$\$\$ per square foot and the mean was \$\$\$\$\$ per square foot. (Exhibit 2A).
12. The Taxpayer's third methodology compares the assessed land value of the subject to five parcels located across the street from the subject property. The Taxpayer's representative determined that the subject land was valued at \$\$\$\$\$ per square foot while the median of the comparables was \$\$\$\$\$ per square foot and the mean was \$\$\$\$\$ per square foot. (Exhibits 3, 5, and 7).
13. The Taxpayer's representative determined that the assessed value of the improvements on the subject property was \$\$\$\$\$ per square foot. He compared the assessed value of the subject improvements to the assessed value of the improvements for all buildings located in Neighborhood ##### that were Rental Class (X) and between ##### and ##### rentable square feet, excluding those properties located on STREET. The Taxpayer's representative determined that the median of the comparables was \$\$\$\$\$ per square foot and the mean was \$\$\$\$\$ per square foot. (Exhibit 4A).
14. As presented at the hearing, the Taxpayer's representative's analyses included both the land and improvements for only one parcel, Parcel No. #####-2. That property is assessed at an overall value of \$\$\$\$\$ per square foot, while the subject is assessed at an overall value of \$\$\$\$\$ per square foot. Parcel No. #####-2 has a reduction in value because of its high vacancy rate. (Exhibit R-8).
15. The Taxpayer's land analysis presented at the hearing failed to include the three properties in closest proximity to the subject that were zoned for commercial rather than industrial use. Parcel No. #####-3 is located across the street from the subject, Parcel No. #####-4 is adjacent to the subject, and Parcel No. #####-5 is located adjacent to Parcel No. #####-4. Each of these properties, with the same zoning and use as the subject, have an assessed land value of \$\$\$\$\$ per square foot.
16. The Taxpayer's improvement comparables are primarily industrial properties, whereas the subject property is an office. An industrial building is primarily open shell warehouse with little build-out. For the County's valuation using an income approach, the base lease

rate for offices in the subject area was \$\$\$\$ per square foot, while the base lease rate for industrial properties was in the \$\$\$\$ per square foot range.

17. The Taxpayer's analysis of the improvement comparables includes only two office buildings. Parcel no. #####-2 is valued at \$\$\$\$ per square foot for the improvements. Parcel no. #####-3 is valued at \$\$\$\$ per square foot for the improvements. The subject property improvement value is \$\$\$\$ per square foot.

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.
- (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.

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

The Taxpayer does not dispute that the \$\$\$\$ value determined by the Board of Equalization is the fair market value of the subject property. Rather, the Taxpayer is arguing that the land value for the subject property is higher than other properties in the subject neighborhood, and that the assessed value of the building is higher than other properties in the subject neighborhood.

The Taxpayer has raised an equalization argument, and to prevail must show that the County's appraised value for the subject property deviates more than 5% from the assessed value of comparable properties. Utah Code Ann. §59-2-103 provides that property shall be assessed on a uniform and equal rate on the basis of its fair market value. However, the Court in *Mountain Ranch Estates v. Utah State Tax Comm'n*, 100 P.3d 1206, 1210 (Utah 2004) found:

Fair market value indeed becomes a subordinate consideration in a scenario where a property owner's assessment accurately reflects the fair market value, but nevertheless exceeds by more than five percent the valuation of comparable properties. Where an accurate fair market value assessment stands apart from a group of undervalued comparable properties, valuation accuracy may not be used to defend the otherwise aberrant assessment. The property owner "singled out" for a legitimate fair market value assessment would be entitled to relief under Section 59-2-1006(4).

In *Appeal No. 09-3842*, the Commission found that "we do not disagree that a single component of an assessment, e.g. improvement, land, or site improvements might be compared independently." However, in that appeal, the property at issue may have been assessed using the cost approach, where the values for the land and the improvements were determined separately with individual valuation methodologies. The Commission discussed *Appeal No. 09-3842* in another decision, *Appeal No. 09-3838*, wherein the Commission addressed separate equalization arguments for land and improvements. The Commission stated that it "is unaware of any appraisal principle that would allow for an improvement to be compared with other

improvements, and then allow for comparisons of land based on different improved properties.” The Commission also recognized that “[i]f a party cannot find comparable properties for land and improvements, it may be extremely difficult to make an equalization argument.” Furthermore, the Commission noted that in that appeal, the Taxpayer only had three equalization comparables and stated that “[i]t is difficult to establish that properties are not equalized based on a limited number of comparables.”

The Commission has previously determined that the Taxpayer’s equalization approach is questionable. The County is required to value property based on zoning laws in accordance with Utah Code Ann. §59-2-102(12). There are only a handful of commercial properties in the subject neighborhood, and the commercial land values are consistent. The Taxpayer’s requested land value averages the assessed value of land that has a different zoning, primarily industrial, which has a lower value than commercial zoned property. The Taxpayer’s improvement comparables included only two office buildings. The assessed value of the subject improvements does not appear to be out of line with that of other office buildings in the area. For these reasons, the Taxpayer has not shown that the value should be reduced on an equalization basis, and the Board of Equalization value should be sustained.

Jan Marshall
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 and date sustains the Board of Equalization. It is so ordered.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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.

