

12-955  
TAX TYPE: PROPERTY TAX - LOCALLY ASSESSED  
TAX YEAR: 2011  
DATE SIGNED: 3-13-2013  
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON

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BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 12-955</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax / Locally Assessed</p> <p>Tax Year: 2011</p> <p>Judge: Chapman</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:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER, Taxpayer

For Respondent: RESPONDENT, from the 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 January 23, 2013.

At issue is the fair market value of a commercial property as of the January 1, 2011 lien date. The subject property is located at ADDRESS in CITY, Utah. The Salt Lake County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which the subject property was assessed for the 2011 tax year.

At the hearing, the taxpayer asked the Commission to reduce the subject's value to \$\$\$\$\$. Subsequent to the hearing, the taxpayer submitted a document in which he asked the Commission to reduce the subject's value to \$\$\$\$\$ instead of the \$\$\$\$\$ amount he had previously requested.<sup>1</sup> The County asks the Commission to sustain the subject's current value of \$\$\$\$\$.

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 §59-2-102(12) defines “fair market value” to mean “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.”

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 . . . .”

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

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<sup>1</sup> In the post-hearing document, the taxpayer asks the Commission to establish the subject's value at \$\$\$\$\$, based on the average price per square foot at which the taxpayer's three comparables sold. The Commission generally does not consider post-hearing evidence that it has not requested. One of the reasons is because the other party did not have an opportunity to respond to it at the hearing. In this case, the taxpayer has not proffered any post-hearing evidence that he had not already proffered at the Initial Hearing. He proffered these three comparables at the hearing and requested the \$\$\$\$\$ value as an alternative value at the hearing. At the hearing, the County responded to these comparables and the \$\$\$\$\$ proposed value. As a result, the Commission was going to address the three comparables and the \$\$\$\$\$ proposed value in its decision even before the taxpayer submitted the post-hearing document. For these reasons, the Commission need not notify the County of the post-hearing submission for a response prior to issuing its decision.

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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 subject property is comprised of ##### acres of land and an office/industrial building that was built in YEAR. The building is owner-occupied and has ##### square feet of rentable space. Approximately one-third of the subject's building is office space, while the remaining two-thirds is warehouse space used for mechanical repairs of printers and other machines. The subject property's current value of \$\$\$\$\$ equates to a value of \$\$\$\$\$ per square foot (\$\$\$\$\$ divided by ##### square feet).

Taxpayer's Information. The taxpayer proffers that the subject's assessed value increased 8% from 2009 to 2010 and 15% from 2010 to 2011. The taxpayer also proffers that the taxes on the subject property increased 15% from 2009 to 2010 and 20% from 2010 to 2011. The taxpayer believes that these increases are unacceptable because values decreased or remained stable during these years and because the increases are greater than the inflation rate. For these reasons, the taxpayer initially asked the Commission to reduce the subject's current value of \$\$\$\$\$ to \$\$\$\$\$, which is the value at which the subject property was assessed for the 2010 tax year.

The Commission generally does not consider the values at which a property was assessed for prior years when determining the value for the current tax year at issue. Usually, as in this case, there is insufficient information to know whether the assessed value for a prior year represented the subject's fair market value for that year. For example, if the subject property had been underassessed for the 2009 and/or 2010 tax years, it would not be unreasonable for the subject's value to have increased for 2011. There is no information to show whether or not the subject's 2009 and 2010 assessed values were correct.

In addition, value is based on a property's "fair market value" as of January 1<sup>st</sup> of the tax year at issue (in this case, as of January 1, 2011). Sections 59-2-103(1), 59-2-102(12). Utah law does not provide for a property's assessed value for the current year to be determined by applying the inflation rate or some other percentage to a prior year's value. Instead, Utah law provides that for each tax year, the property's value will be its "fair market value" for that year. For these reasons, the taxpayer's proposal to reduce the subject's 2011 value to its 2010 value is not convincing. It is preferable to use market or other information relevant to the tax year at issue to determine whether or not the subject's current value is correct.

The taxpayer also questioned the percentages at which the subject's taxes increased between 2009 and 2011. The amount of property taxes is the product of the subject property's value multiplied by the tax rate approved by the taxing entities in whose boundaries the subject is located. In this appeal, the Commission has the authority to review the subject property's 2011 value, but not to change the 2011 tax rate that was established more than a year ago for the taxing area in which the subject is located.

To support a lower value for the 2011 tax year, the taxpayer also provides market information relevant to 2011. The taxpayer proffers three comparable sales of commercial properties that sold between September 2010 and March 2011 for prices ranging between \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot. The taxpayer claims that the average of these three prices per square foot is \$\$\$\$\$ per square foot, which would result in a value of \$\$\$\$\$ for the subject if this rate were applied to the subject's ##### square feet.

The taxpayer's three comparables, however, are located relatively far away from the subject property. They are located between 48 and 65 blocks away from the subject property. In addition, the comparable that sold for \$\$\$\$\$ per square foot is 20 years older than the subject, and the comparable that sold for \$\$\$\$\$ is bank sale of a much larger property. For these reasons, the taxpayer's comparables do not convincingly show that the subject's current value of \$\$\$\$\$ per square foot is incorrect. However, before denying the taxpayer's appeal, the County's information should also be analyzed.

County Information. The County proffered 23 comparable sales of industrial properties in support of the subject's current value of \$\$\$\$ per square foot. The 23 comparables sold between January 2010 and December 2011 for prices ranging between \$\$\$\$ and \$\$\$\$ per square foot. The County contends that the prices at which the comparables sold have an average of \$\$\$\$ per square foot and a median of \$\$\$\$ per square foot. The County also notes that of the 23 comparables, 18 of them sold at a price that is higher than the subject's current value of \$\$\$\$ per square foot. For these reasons, the County asks the Commission to sustain the subject's current value.

Many of the County's comparables, like the taxpayer's comparables, are located relatively far away from the subject property. The County indicated that it was providing all sales in its records that sold in the southwest quadrant of Salt Lake County in 2010 and 2011 and that are less than twice the size of the subject.

The County also pointed out that two of its comparables are located near the subject property. One, which sold for \$\$\$\$ per square foot, is located approximately two blocks from the subject. The second, which sold for \$\$\$\$ per square foot, is located approximately five blocks from the subject. These properties are relatively close in age and size to the subject property, but have less office space than the subject. Although these two comparables sold in September 2011 (more than eight months after the lien date), the County contends that prices remained flat or declined slightly throughout 2011.

The County has provided numerous sales from 2010 and 2011 that support the subject's current value of \$\$\$\$ per square foot. The most convincing comparables are those two of the County's comparables that are located within five blocks of the subject property and that sold for prices in excess of \$\$\$\$ per square foot.

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When the parties' comparables are considered as a whole, the evidence does not show that the subject's current value of \$\$\$\$ is incorrect. Accordingly, the subject's current value of \$\$\$\$ per square foot, which equates to \$\$\$\$\$, should be sustained.

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Kerry R. Chapman  
Administrative Law Judge

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the subject's current value of \$\$\$\$ for the 2011 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 \_\_\_\_\_, 2013.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner