

12-2733

TAX TYPE: PROPERTY TAX - LOCALLY ASSESSED

TAX YEAR: 2012

DATE SIGNED: 7-5-2013

COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-2733</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2012</p> <p>Judge: Johnson</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:

R. Bruce Johnson, Commission Chair
Michael J. Cragun Commissioner

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER-1
REPRESENTATIVE FOR TAXPAYER-2

For Respondent: RESPONDENT-1, County Assessor
RESPONDENT-2, Deputy County Assessor
RESPONDENT-3, Deputy County Assessor

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 May 1, 2013 in accordance with Utah Code Ann. §59-1-502.5. The RURAL COUNTY Assessor's

Office valued the subject property at \$\$\$\$ as of the January 1, 2012 lien date. The Board of Equalization reduced the value to \$\$\$\$\$. Of this amount, approximately \$\$\$\$ is attributable to the improvements and \$\$\$\$ to the land.¹ The County is asking the Commission to affirm the Board of Equalization. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$.

The subject property is a ##### acre lot on NAME OF STREET improved with a ##### square foot COMPANY. The Taxpayer originally raised equalization concerns, but withdrew that argument at the hearing. There is no dispute about the value of the improvements. The dispute between the parties relates to the value of the land. The land is the subject of a lease agreement between the Taxpayer and the COMPANY. Pursuant to the lease, the Taxpayer received rent of about \$\$\$\$ for 2012. The Taxpayer capitalizes that rent at 10% for a land value of \$\$\$\$\$. Adding \$\$\$\$ for improvements results in their requested value.

The County notes that the land value determined by the BOE, \$\$\$\$\$, would result in a capitalization rate of about 6.25%. The County reported that the NAI Southern Region Retail 2012 4th Quarter Market Report² reported capitalization rates for improved retail property at 7-8%. The County then stated: "A reasonable capitalization rate for land would be something lower than the reported improved capitalization rates simply because land is a non-depreciating asset. The County's indicated capitalization rate of 6.25% is considered very reasonable considering it is .75% lower than the reported capitalization rates for improved retail property."

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

¹ Other information in the record indicates the allocation is: land \$\$\$\$\$, improvements \$\$\$\$\$. We believe any difference in the allocation is immaterial.

² Because the lien date is January 1, 2012, the Fourth Quarter Report for 2011 would have been preferable. In the absence of a 2011 report, however, the 2012 report is the best information available to us.

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.

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

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 to 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.

Essentially, the Taxpayer asks for a capitalization rate of 10%. The County asks for a capitalization of 6.5%. Both are supportable. Because the Taxpayer has the burden of proof, the Board of Equalization could be affirmed on that ground alone.

The Taxpayer stated at the hearing, however, that the existence of the lease would prevent a sale of the land at fair market value. We accept that assertion and believe that is the

real issue before us. The evidence indicates that the lease is essentially a “below-market” lease. A below-market lease, however, does not reduce the value of the overall property. The value of the lessor’s interest is diminished, but the value of the lessee’s interest is increased. See *The Appraisal of Real Estate* (10th Ed. 1992), p. 126. The Utah Constitution and the property tax statutes require us to value the entire property, that is, the fee simple interest. Thus, we must value both the lessor’s and the lessee’s interest. The evidence before us supports a value of \$\$\$\$ for the fee simple interest in the land and \$\$\$\$ for the fee simple interest in the improvements.

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ as of the January 1, 2012 lien date. The RURAL COUNTY Board of Equalization decision is affirmed.

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 _____, 2013.

R. Bruce Johnson
Commission Chair

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner