

13-922
TAX TYPE: PROPERTY TAX
TAX YEAR: 2012
DATE SIGNED: 4-22-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 13-922</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax</p> <p>Tax Year: 2012</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. 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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative
OWNER, Owner

For Respondent: RESPONDENT-1, Certified General Appraiser, Salt Lake County
RESPONDENT-2, Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on January 27, 2014, in accordance with Utah Code §59-1-502.5. The Salt Lake County Assessor's Office had originally valued the subject property at \$\$\$\$\$, as of the January 1, 2012

lien date. The County Board of Equalization (“the County”) sustained the value. At the hearing the Property Owner requested a reduction to \$\$\$\$\$, or even \$\$\$\$\$. The County requests that the value remain as set by the County Board of Equalization.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible personal 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 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.
- (5) 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.

A party requesting a value other than that established by the county Board of Equalization has the burden of proof to establish that the market value of the subject property is different. 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 (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 located at SUBJECT ADDRESS, CITY-1, Utah. It is #####-acres of land that is irregular in shape with access from both ROAD, which is a frontage road next to (X), and on STREET. The property is improved with a combined recreational vehicle park and mobile home park. On this property there are #####- mobile homes. These are leased on a long term basis as there are significant costs to move a mobile home to another site. There are also #####-motor home/RV sites which are leased on a monthly or nightly basis. For these sites the Property Owner pays the utilities. There are also #####-tent sites on the property. There are bathrooms and showers on the property for the RV sites and tent sites. The property has a swimming pool and hot tub. There is a small 12' by 12' store and office on the property. Because it is primarily an RV park, it is a 24 hour operation and the Property Owner has employees on the property at all times. There is an area of open storage for #####-vehicles including boats or RVs. The Property Owner states that the water and utilities lines out to various mobile home sites and RV pads are old and in constant need of repair.

Because the majority of this property is RV sites, the Property Owner argues that this should be valued as an RV park and not a mobile home park. The Property Owner argued that there is less stability with RV tenants and higher costs. It was also the Property Owner's contention that banks take this into consideration and RV parks sell at higher capitalization rates because of the risk than do mobile home parks. The RV tenants were often construction workers who would stay at the park when there was work in the area, so when the economy was bad, there were fewer tenants. Also the Property Owner argued the price of gas had an effect on whether people would travel and stay at these types of parks. However, the mobile home tenants were long term because it would cost at least \$\$\$\$\$ to move their mobile home from one location to another.

The Property Owner also argued that the subject's current use was the highest and best use of the property. It was the Property Owner's position that the subject property would not be a good area for commercial development. On one side it is (Y) and on the other side an old (Z) with outdoor storage. He also states that ROAD dead ends just past the subject property, so there is not a lot of traffic on the street. The property would have visibility from (X) however. Across STREET, which is the street at the rear of the subject property, there is residential development with single family homes.

The Property Owner did not submit an appraisal of the property. As it was his contention that the highest and best use of the property was as is, he provided an income approach from the actual rental income of the business. The Property Owner provided a 2011 Profit and Loss Statement, which indicated \$\$\$\$\$ in total income from the mobile home and RV rentals, as well as the other storage rentals. The statement indicated total expenses. After removing from the list depreciation, interest and property tax, the Property Owner indicated that there were \$\$\$\$\$ in expenses and a “net ordinary income” of \$\$\$\$\$. He capitalized this at 11.49% which he argued was a reasonable rate for RV parks and this indicated a value for the subject of \$\$\$\$\$.

In the alternative, the Property Owner argued if the current use as an RV park was not the highest and best use, and instead the value of this property was the land for redevelopment, the land value was considerably lower than the value set by the County Board of Equalization. It was his contention that the property was not in a good location for commercial development. The Property Owner also argued if the property were to be redeveloped for some other use, there is a law that protects the mobile home tenants, and the costs of complying with those provisions would need to be taken into consideration. He stated that the owner of the property would have to pay to move the mobile homes to a new location, which would cost at least \$\$\$\$\$ per mobile home. Further, he indicated that it would actually be difficult to find other mobile home parks that would take the tenants. It was his conclusion that in legal and moving costs it would be at least \$\$\$\$\$ to move the mobile home tenants off the property.

The Property Owner provided three land sales located within five miles from the subject. None of these sales were in CITY-1. Two of these properties were zoned commercial and one residential. He indicated that it was difficult to find sales near the subject and near the lien date for this appeal, due to few sales during the market recession. The County’s assessed value indicates a land value of \$\$\$\$\$ per square foot for the subject. It was his contention from his comparables that the land value was around \$\$\$\$\$ per square foot or \$\$\$\$\$. This did not even take into account the costs of demolishing and removal of the improvements and relocating the mobile home tenants. The three land sales he provided are as follows:

Address	Sale Price	Sale Date	Size in Square Ft.	Price per Square Ft.
SUBJECT ADDRESS	CITY-1		#####	
ADDRESS-1, CITY-2	\$\$\$\$\$	DATE	#####	\$\$\$\$\$
ADDRESS-2, CITY-3	\$\$\$\$\$	DATE	#####	\$\$\$\$\$
ADDRESS-3, CITY-4	\$\$\$\$\$	DATE	#####	\$\$\$\$\$

The County did not submit an appraisal. It was the County’s position that the value should remain as set by the County Board of Equalization at \$\$\$\$\$. The County pointed out that the subject land was in a CR commercial zoning in the (X) corridor and there were a number of uses that could be put to this property. It was the County’s position that the value was in the land as the current use was not the highest and best use for this property. The County provided four land comparable sales. It was the County’s contention that these sales more than supported the County’s value set for the subject property. Three of the County’s comparables were properties located in CITY-1 and one in CITY-5. Like the subject property, the County’s comparables were located near (X) in the interstate corridor. Three of the County’s comparables were significantly smaller parcels than the subject. The County’s comparables are as follows:

Address	Sale Price	Sale Date	Size in Square Ft.	Price per Square Ft.
SUBJECT ADDRESS	CITY-1		#####	
ADDRESS-4, CITY-1	\$\$\$\$\$	DATE	#####	\$\$\$\$\$
ADDRESS-5, CITY-1	\$\$\$\$\$	DATE	#####	\$\$\$\$\$
ADDRESS-6, CITY-5	\$\$\$\$\$	DATE	#####	\$\$\$\$\$
ADDRESS-7, CITY-1	\$\$\$\$\$	DATE	#####	\$\$\$\$\$

The first two County comparables were adjacent to each other. These were narrow triangular parcels with a high proportion of frontage. These properties backed onto Interstate (X) for good visibility and fronted onto STREET-1/STREET-3 for good access. The larger of these lots has now been developed into a high end office building. The comparable at ADDRESS-6 was a rectangular shaped parcel on a frontage road just off of (X). All three of these properties were considerably smaller in size than the subject. The property at ADDRESS-7 was the only property near in size to the subject. It also had sold for less than the other parcels and had less exposure to the Interstate than the subject. It was the County’s position that this comparable supported a value of \$\$\$\$\$ per square foot for the subject.

In seeking a value other than that established by the County Board of Equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County, but also provide a sound evidentiary basis to support a new value. Property tax is based on the fair market value of the property 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 determining the fair market value, the Commission needs to consider the highest and best use of the property and, in this case the evidence indicates that the highest and best use is not the current use of the property. The

Property Owner did submit land sales that indicated a lower value, but the Property Owner's sales were far from the subject in different cities and not in the (X) corridor. They were not in comparable locations. The subject is located in CITY-1, east of (X). Although the (Z) next door to the subject might not make the subject ideal for some high end development uses, like the 'trophy' office building, the subject is surrounded by development in CITY-1 and the better comparables offered are from the County. Valuing this property as vacant land requires the costs of demolition and removal of the current improvements, as well as relocation of the mobile homes. However, the County's comparables suggest a land value around \$\$\$\$ per square foot, or \$\$\$\$\$, for the subject. This is significantly higher than the value set by the County Board at \$\$\$\$\$. The Board of Equalization value would already account for costs to get this property into condition ready for a new development. The value should remain as set by the County Board.

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, 2012 lien date. 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 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 _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

