

13-1317
TAX TYPE: PROPERTY LOCALLY ASSESSED
TAX YEAR: 2012
DATE SIGNED: 4-14-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-1317</p> <p>Parcel Nos. Multi - #####</p> <p>Tax Year: 2012</p> <p>Case Type: Locally Assessed Property</p> <p>Judge: Phan</p>
--	---

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-1 FOR PETITIONER, Representative
REPRESENTATIVE-2 FOR PETITIONER, Representative
For Respondent: RESPONDENT-1, RURAL COUNTY Assessor
RESPONDENT-2, MAI, Hearing Officer, RURAL COUNTY BOE

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the RURAL COUNTY Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on January 14, 2014, in accordance with Utah Code §59-1-502.5. At issue in this appeal are 171 individual parcels which are part of the PETITIONER PROPERTY in CITY,

Utah. The individual parcels were combined into five groups by the parties and total values provided for each of the groups. These groupings, the County Assessor’s original value, the value set by the County Board of Equalization (“County”), which was the value requested by the County at this hearing, and the value requested by the Property Owner are as follows:

Groups	Assessor’s Value	BOE Value	Size in Square Foot/Acres	Property Owner’s Value
##### Commercial Units	\$\$\$\$\$	\$\$\$\$\$	#####	\$\$\$\$\$
##### Support Commercial Units	\$\$\$\$\$	\$\$\$\$\$	#####	\$\$\$\$\$
##### Parking Units	\$\$\$\$\$	\$\$\$\$\$	#####	\$\$\$\$\$
##### Storage Units	\$\$\$\$\$	\$\$\$\$\$	#####	\$\$\$\$\$
##### Cabin Lot Units	\$\$\$\$\$	\$\$\$\$\$	#####	\$\$\$\$\$

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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

“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. (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 assessment contained error, and (2) provide the Commission with a sound evidentiary upon which the Commission could adopt a lower valuation. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The subject parcels are a portion of the parcels that comprise the PETITIONER PROPERTY located at the RESORT in CITY, Utah. This is a condo/hotel project that currently has residential condominium units as well as hotel operations, amenities and commercial spaces. This property has (X) access to the (X-1) of the RESORT. Owners of the individual condominium units may place their units in the rental pool as nightly rentals which provide the lodging for the hotel operations. HOTEL has been engaged to manage the lodging function at the property. The representatives for the Property Owners explained that the reason the Commercial Units, Support Commercial Units, Parking Units and Storage Units that are at issue in this matter had been divided into individual parcels was so the developer or hotel management team would have enough votes to control and operate the project as a hotel. However, because they have been divided into separate parcels they technically could be purchased and owned separately from the residential condominium units or separately from each other. The residential condominium units are not at issue in this appeal.

The Commercial Unit Parcels consist of the hotel management areas including lobby, front desk, management offices, ballroom, convention spaces, as well as a restaurant unit, a club unit, a (X) shop unit, a spa and salon unit, a daycare center unit and a retail unit. The 6 Support Commercial Units are used for ballroom storage, phone closet, pantry, hotel storage, linen storage and a woodshop.

The ##### parking units at issue in this appeal are the only units that are available to be used for the hotel operations and other for the other commercial units on the property. The Property Owner's representatives explain that the ##### parking spaces are used with the hotel for employee parking, contractors parking, deliveries, as well as parking for customers to the restaurant. The residential condominium units each are sold with one parking space and those spaces are not at issue in this appeal. Technically the ##### subject parking spaces could be sold separately to persons who did not own in the building, but wanted parking on the (X-1). They could also be sold to condominium owners who wanted a second parking space. In fact, the Property Owner currently leases out ##### of the subject parking spaces at a "zero value" where purchasers of residential condominiums had negotiated for an extra parking space. The County

Assessor's original assessed value was \$\$\$\$ per parking space. The County Board of Equalization reduced the amount to \$\$\$\$ per parking space after reviewing comparable sales.

There are ##### separately platted storage unit parcels at issue in this hearing, which total ##### square feet. The County Assessor had originally valued these parcels at \$\$\$\$ per square foot and the County Board of Equalization reduced the value to \$\$\$\$ per square foot. For the most part these ##### parcels were designed to be very small storage units, around ##### to ##### square feet. Only ##### of these units have actually been built out and are being used for private storage. These are units ##### through ##### and they are ##### to ##### square feet in size. Most of the area platted as these storage units is open area unfinished basement area and is used by the hotel to store convention and décor items or they are storing building supplies. The Property Owner provided plats and photographs that indicated units ##### through ##### were used to store building supplies and décor. Units ##### through ##### were being used as a Maintenance shop. Units ##### through ##### were holding paint and building supplies. Units ##### through ##### were used as an employee break room with lockers and housekeeping storage. Unit #####, which was a much larger unit, with ##### square feet, used for the water softener, pumps and pool equipment.

Neither side submitted an appraisal at the hearing for the Commercial units, Support Commercial Units, Parking or Storage units. It was the Property Owner's contention that the Support Commercial Units, Parking Units and Storage Units were all used as part of the hotel operations so would already be included in the income value derived for the hotel operations. In addition, the Property Owner argued that there should not be a separate value attributed to several of the retail spaces. The Property Owner agreed with the value concluded by the County Board of Equalization on for the hotel operations of \$\$\$\$ based on the Hearing Officer for the County Board's income approach. However, the Hearing Officer then added an additional value for several commercial spaces in the property that could be leased for retail or used as commercial businesses. The Property Owner agreed that an additional value of \$\$\$\$ could be added to the hotel operations for the restaurant space, which was being leased and used as a restaurant. The Property Owner also agreed that an additional \$\$\$\$ could be added for the (X) Valet unit, which was also leased to an operating business. This totaled the value of \$\$\$\$ that the Property Owner was requesting. The Hearing Officer for the County Board had, however, additionally added a value for the club unit, the spa & salon unit, the day care unit and the retail unit, which total the \$\$\$\$ adopted by the County Board.

Upon review of the information presented, these other spaces may eventually be leased or used for a spa, retail store and club and generate income. The value of these spaces is not

included in the County's income value for the hotel operations and some value would need to be added for these spaces. The Property Owner did not provide an income approach or evidence of lower lease rates than had been used by the County in determining the values for these additional spaces. Therefore, the value for the Commercial Units and Support Commercial Units should remain as set by the County Board of Equalization at \$\$\$\$\$.

The Property Owner then argued that no additional value should be added for the parking. It was the Property Owner's contention that some parking was needed for the hotel operations and for the retail spaces. ##### of the ##### spaces were leased at no cost to owners of the condominiums who had negotiated for an extra space with their purchase. The fact that this occurred indicated value for the spaces and it is unclear what the Property Owner received in return, maybe a sale for a higher price than would have been paid otherwise. As part of the discussion at the hearing the County's representatives acknowledged that ##### parking space for ##### feet of restaurant, or ##### parking spaces, would be needed for the restaurant. As the County is also valuing the other commercial retail spaces by assuming that they would be leased and operated as businesses, some parking is needed for these other spaces as well. The more commercial operations, the more need for parking for employees, customers and deliveries. Additionally, the information provided was that some spaces are needed for the hotel operations for employees, deliveries and contractors. With ##### square feet of space in the Commercial Units and ##### parking for every ##### square feet, this would indicate the Commercial Units in total would need ##### parking spaces for the operations that the County is valuing. It is likely that the remaining spaces could be sold separately and the value of \$\$\$\$\$ per space used by the County Board would be appropriate for those spaces. Based on this the value of the parking spaces should be reduced to \$\$\$\$\$.

The County Board of Equalization had reduced the value of the storage unit spaces to \$\$\$\$\$ per square foot based on an income approach. The Property Owner argues that only the ##### units currently built out and leased to private individuals add any value. The Property Owner did not dispute the \$\$\$\$\$ per square foot for these ##### units. It was the Property Owner's assertion that the rest of the space was used for the hotel operations so the value would be included in the income approach for the hotel operations. The evidence offered was that some of these spaces were being used as part of the hotel operations. However, many of these spaces are currently being used to store construction supplies which, after construction is completed, could be used for storage units. Although some of these units are also storing hotel décor, there are other storage units included in the Support Commercial Units, as well for hotel's storage. Based on the evidence presented, Unit #####, with ##### square feet, should be removed from

the value as it is being used for equipment related to the hotel and pool. Units ##### through ##### should also be removed as they are being used for maintenance supplies and shop. These units total ##### square feet. Units ##### through #####, totaling ##### square feet, should be removed as they are being used as an employee break room with lockers and housekeeping storage. These three areas are a combined total of ##### square feet, multiplied by the \$\$\$\$ per square foot would be a reduction from the County's value in the amount of \$\$\$\$\$, leaving a value for the remaining units of \$\$\$\$.

In addition to the improvements, also at issue in this appeal was excess land. There were ##### platted vacant land parcels which totaled only ##### acres and were entitled to ##### square feet of building density. This excess land is located on the (X-1) above the subject in elevation, in an area that is very steep. Although location on the (X-1) was very positive for valuation, the Property Owner's representatives stated the costs of getting a driveway and parking on this land would be very high due to (X-1) and access. The representative for the Property Owner stated it would cost a \$\$\$\$ or \$\$\$\$ just to get a road and parking to this property. Both parties agreed that the main value of the land in this area was based on the building density allowed under the RESORT SPA Agreement and not necessary the size of the land. The value originally assessed by the County and sustained by the County Board for the land was \$\$\$\$ per square foot of density.

The Property Owner did submit excerpts from two separate appraisals that dealt with this excess land. One had been prepared by NAME of BUSINESS with the effective date of November 21, 2011. Only the portion of this appraisal that valued the land was provided, so the total value conclusion for all the property was not submitted. It was NAME conclusion the value of these ##### Cabin Lots was \$\$\$\$\$. In the appraisal five land comparables were considered, however, three of these sales had occurred in 2006. NAME analysis focused on the building density of the subject and the comparables. The comparables had sold for a range from \$\$\$\$ to \$\$\$\$ per square foot of building density, but it was the 2006 sales that had sold for a higher price per density than the sales nearer the lien date. The three 2006 sales had sold for \$\$\$\$ to \$\$\$\$ per square foot of density. A sale in April 2010 for a lot with ##### square foot of density had sold for \$\$\$\$ per density foot. A sale in January 2011 with ##### square foot of density had sold for \$\$\$\$ per density foot. It was NAME conclusion that the "as is" value of this excess land was \$\$\$\$ per square foot of building density, which rounded was \$\$\$\$.

The Property Owner had also submitted a few pages from an appraisal by BUSINESS-2. Again these pages dealt only with the land and it is unclear if the appraisal had valued the entire project in total. This appraisal concluded that as of November 21, 2012, the "as is" value of the

excess land was \$\$\$\$\$ and this was based on a \$\$\$\$\$ per square foot of density. This appraisal indicated that the subject had ##### square feet of density. The consensus from the hearing was the ##### square feet of density used in NAME appraisal. The BUSINESS-2 appraisal had relied on sales that significantly pre-dated the lien date at issue, occurring from 2000 to 2005, although time adjustments were considered.

The County did not offer any comparables at the hearing and from the information submitted, the County Board had sustained the original County's value for the excess land on the basis that no evidence had been submitted for the excess land. The County's representative did argue that he thought the NAME appraisal had been a valuation of the entire property with the land, improvements and excess land, so that there was some bulk discount that was captured in the value of the excess land. The Property Owner argued that the above appraisals had been submitted at the County Board of Equalization hearing. Regardless it is appropriate for the Tax Commission to consider new appraisal information presented for this hearing and the comparables offered in NAME appraisal are the best evidence of value for the land presented at this hearing. There does not appear to be a bulk sale discount as argued by the County as the conclusion is within the range of the actual sale prices per density foot of the comparables. The value of the excess land should be lowered to \$\$\$\$\$.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property as of the January 1, 2012 lien date to be as follows:

Combined value for ##### Commercial and ##### Support Commercial Units	\$\$\$\$\$
Value for Parking Units	\$\$\$\$\$
Combined value for ##### Storage	\$\$\$\$\$
Combined value for ##### Cabin Lot Units	\$\$\$\$\$

The RURAL COUNTY Auditor is hereby ordered to adjust its records accordingly. 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

Appeal No. 13-1317

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