

07-0006
Property Tax/Locally Assessed
Signed 05/30/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 07-0006
)	Parcel Nos. #####-1, #####-2
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION)	
OF KANE COUNTY,)	Tax Year: 2006
STATE OF UTAH,)	
)	Judge: Marc Johnson
Respondent.)	

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. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37 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 order, 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:

Marc Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy Assessor
 RESPONDENT REPRESENTATIVE 2, Clerk

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was presented in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on March 20, 2007. Petitioner is appealing the assessed value as established for the subject property by the Kane County Board of Equalization (“BOE”). The subject property is made up of two parcels with parcel nos. #####-1 and #####-2, and is located

Appeal No. 07-0006

at approximately ADDRESS in CITY, Utah. The parcels are, respectively, 2.43 acres and 2.34 acres. The lien date at issue in this matter is January 1, 2005.

The Kane County Assessor's Office had originally set the value of parcel #####-2 at \$\$\$\$\$, and the Kane County Board of Equalization lowered the value to \$\$\$\$\$. For parcel #####-1, the Kane County Assessor's Office had valued the property at \$\$\$\$\$, and the Kane County Board of Equalization lowered the value to \$\$\$\$\$.

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 provide by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“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. . . . (Utah Code Ann. Sec. 59-2-1006(1).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound

evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The subject properties consist of two separate parcels of vacant land, which total 4.77 acres. Petitioner is currently using property to farm hay. The subject property is adjacent to his residence and situated on HIGHWAY in the South end of CITY. As the parcels combined are less than five acres these property are not assessed under the greenbelt provisions.

Petitioner argues that the assessor has valued the subject property as commercial property, although it is not zoned for commercial use. The County acknowledged that it had valued the property as commercial property arguing that the subject property could be rezoned as commercial based on the city's potential commercial zoning district. The city law indicates that any property within ½ block of the highway could be rezoned as commercial.

Petitioner provided evidence in this matter that the property was currently zoned for rural agriculture and could not be used for commercial purposes unless it was rezoned. A letter from the Mayor indicated that the potential commercial zoning does not affect the existing zones until the property owner goes through the proper channels to change the existing zoning and the city had granted the zoning changes.

There was no evidence in this matter that Petitioner had ever applied to have the zoning changed. Petitioner currently was using the property for agricultural purposes and planned on continuing that use. Petitioner argued that the values should be similar to that established by the Tax Commission in an appeal for the 2005 tax year. For 2005, the Tax Commission valued parcel #####-2 at \$\$\$\$\$ and for parcel #####-1 at \$\$\$\$\$.

As was the case for the previous appeal, one issue before the Commission is a legal question, whether the valuation must be based on the actual current zoning, or whether it could be based on a potential zoning that would result in a significantly higher value. Utah Code

Sec. 59-2-102(12) provides that the value “shall be determined using the current zoning” but then provides the exception for those cases where there is a “reasonable probability of a change in zoning laws affecting that property in the tax year in question.”

However, there is another issue before the Commission that must be addressed. That is whether the Respondent’s evidence takes zoning into consideration. This year, the assessor, in presenting comparable sales, focused on the fact that all of the transactions were zoned agricultural at the time of sale. Three of the sales were for smaller parcels ranging in size from 0.5 to 1 acre, with prices from \$\$\$\$\$ to \$\$\$\$\$ per acre (rounded). Two other sales were larger parcels of 11.17 acres and 13.4 acres, which sold for \$\$\$\$\$ and \$\$\$\$\$ per acre, respectively. PETITIONER argued, in a letter to the BOE, that the “valuation comparisons are . . . known to be purchased for commercial development.”

The present case revisits the scenario of whether a taxpayer must, during the tax year, file an application and go through the procedural requirements to have the zoning changed. In the present case, given the zoning of the comparable sales, there is no indication that action on Petitioner’s part would be necessary to sell the property. There is no indication that the assessor would have to make a hypothetical assumption; that someone would need to apply and go through the process for a zoning change, and that there would be a reasonable probability that the zoning change would be granted. Rather, given the zoning of the comparable sales, it appears that transactions occur with only the expectation that zoning would change at some point in the future.

Accordingly, the Commission finds that the subject property should be valued on the basis of the comparable sales presented by the Respondent. Based on the assessments established by the BOE, both parcels are assessed at \$\$\$\$\$ per acre. These amounts are sufficiently bracketed by the comparable sales; higher than the smaller parcels and lower than the larger parcels, to corroborate the assessments.

DECISION AND ORDER

Based on forgoing the Tax Commission sustains the decision of the BOE, and finds that the value of the subject property as of January 1, 2006, to remain at the current assessment. It is so ordered.

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 _____, 2007.

Marc Johnson
Commissioner

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner