

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  vs.  BOARD OF EQUALIZATION OF WEBER COUNTY, UTAH,  Respondent.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>  Appeal No. 08-2686 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2008  Judge:     Phan
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**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:     PETITIONER  
                          PETITIONER REP  
For Respondent:    RESPONDENT REP 1, Real Estate Manager, Weber County  
                          RESPONDENT REP 2, Appraiser, Weber County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing pursuant to Utah Code Secs. 59-2-1006 and 63G-4-201 et al. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1.     Petitioner (the "Property Owner") is appealing the assessed value of the subject property for the lien date January 1, 2008.
2.     For the lien date the County Assessor had valued the property at \$\$\$\$ and the County Board of Equalization (the "County") sustained the value. The Property Owner requests that the value be lowered to \$\$\$\$\$. At the hearing the County requested that the value remain as set by the County Board of Equalization.
3.     The property at issue is Parcel No.#####, and is located at ADDRESS 1, CITY 1 Utah.
4.     The property is a residential building lot that is .21 of an acre in size. There are no buildings on the subject lot. It is adjacent to another lot owned by the Property Owner and upon which is the Property

Owner's residence. The Property Owner's residence is on the corner of ADDRESS 2 and faces STREET 1. The subject parcel fronts on STREET 2 and is used by the Property Owner as the backyard and garden space for his residence. The Property Owner explained that they had continued to leave the two parcels as separate lots to keep their options open if at some point they decided to sell the subject lot. Both sides agreed that the subject lot could be sold separately and a residence could be built on the subject lot. The other properties on STREET 2 and east of STREET 1 are developed properties, with residences already constructed.

5. The Property Owner did not submit an appraisal or comparable sales at the hearing. Instead he requested a reduction in value to \$\$\$\$\$ based on equalization with neighboring properties. He pointed out that there was an COMPANY 1 residential subdivision right across the street from his residence on STREET 1. It was his testimony, which was supported by evidence offered by the County, that residential lots in that subdivision of similar size were valued less than the subject lot. The County had provided an exhibit titled CITY 1 Vacant Land Price Per Square Foot-Lot Size 0.19 to .23 ("Vacant Land Assessment Comparison"). This exhibit shows fifteen lots identified as located in the COMPANY 1 Subdivision, which were .21 to .23 of an acre in size. These lots were valued by the County at prices ranging from \$\$\$\$\$ to \$\$\$\$\$ per lot. While the subject lot of .21 acres had been valued by the County at \$\$\$\$\$.

6. The Property Owner also submitted two additional equalization comparables. One was at ADDRESS 3 that was .56 acres in size. The County had the land value on this parcel assessed at \$\$\$\$\$. The second property was at ADDRESS 4 and was .32 acres in size. It was valued by the County at \$\$\$\$\$. The Property Owner did not provide evidence that either of these properties were lots that could be developed for a single-family residence, nor evidence that they were comparable to the subject as far as topography, use or other neighborhood factors. From these equalization comparables the Property Owner concluded a value per square foot of \$\$\$\$\$, or a total value for the subject of \$\$\$\$\$.

7. At the hearing the County did respond to the Property Owner's equalization argument by providing the Vacant Land Assessment Comparison which listed the assessed value of all vacant lots in CITY 1 that were similar in size to the subject. There were some lots that were listed as "Secondary Acreage, Non-Taxable or Retention Basin," which the County represented would not be buildable residential lots and, therefore, not comparable to the subject. The remaining lots that were considered by the County as developable residential lots were valued ranging from \$\$\$\$\$ to \$\$\$\$\$ per lot. The subject was near the lower end of this range. They did acknowledge that lots in the COMPANY 1 subdivision across the street from the Property Owner's residence were valued less. They indicated that this was due to large high-density power

lines and a power easement that ran through the COMPANY 1 subdivision. However, they did acknowledge that the COMPANY 1 properties right across the street from the subject did not have power lines or easements, nor did the lots directly west of these properties.

8. The County also presented a list of the assessed values attributable to the land on the properties it considered to be in the same neighborhood as the subject. This was an older and more developed neighborhood than the COMPANY 1 subdivision. The County's boundary for the neighborhood was the east side of STREET 1. These properties generally had residences already built on them. The assessed values attributed to the land on these developed residential properties ranged from \$\$\$\$\$ to \$\$\$\$\$. The value given to the subject was \$\$\$\$\$, which was well within this range. Regarding the Property Owner's equalization comparable at ADDRESS 5, the County testified that this had a backage or residual value.

9. In addition to the equalization comparables, the County also submitted an appraisal as evidence that the County had not overvalued the subject property considering fair market value. The appraisal conclusion was a value of \$\$\$\$\$. However, the County requested that the value remain as set by the County Board of Equalization. Three residential lot sales were considered in the appraisal. One of these properties was located very near the subject at ADDRESS 6, but was also nearer to the power lines. This property sold for \$\$\$\$\$ in August of 2007. This lot was larger than the subject at .35 of an acre. This comparable does support that the market value of the subject is at least the \$\$\$\$\$ set by the County and possibly higher.

10. Upon review of the evidence and arguments presented by the parties at the hearing, the Property Owner's primary contention is equalization. A number of similar vacant lots across the street from the Property Owner's residence are valued lower than the subject parcel. Although some of the COMPANY 1 parcels had power lines or power easements, the subdivision lots on STREET 1 and on the east side of STREET 3 had no lines or easements. Therefore, the impact from the power lines, especially to the homes on STREET 1 would be not much more than the impact of the lines on the subject property. These subdivision parcels appeared to be the nearest vacant residential lots to the subject lot. The County pointed out that the value for the subject lot was consistent with the portion of value they had attributed to the land for all the properties nearest to the subject that were east of STREET 1. This was a more similar neighborhood to the subject, but the Commission has concerns that these are properties that have residences already constructed. The subject is a vacant residential lot. The nearest vacant residential lots at .21 of an acre like the subject are valued at \$\$\$\$\$. This is more than 5% lower than the assessed value of the subject lot at \$\$\$\$\$. The other equalization comparables are not as near in location and were not shown to be comparable buildable residential lots.

APPLICABLE LAW

1. 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.)

2. “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).)

3. (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).)

4. 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). See also Utah Code Sec. 59-1-1417 which provides, “In a proceeding before the commission, the burden of proof is on the petitioner . . .”

CONCLUSIONS OF LAW

1. Utah Code Sec. 59-2-1006(4) provides that a Property Owner may appeal a value based on equalization. The Commission is to adjust if the value the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. The Property Owner does have the

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burden of proof in this matter. The Property Owner offered in addition to the COMPANY 1 subdivision properties two comparables that had a lower assessed value per square foot, but has not provided evidence that these were comparable to the subject. However, there is evidence that the neighboring, developable, vacant lots were valued at only \$\$\$\$\$. These were comparable and support a reduction for the subject to that amount.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2008, is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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