

03-0336  
LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2002  
SIGNED: 02-26-2003  
COMMISSIONERS: R. JOHNSON, P. DEPAULIS, M. JOHNSON  
ABSENT: P. HENDRICKSON  
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
	)	<b>OF LAW, AND FINAL DECISION</b>
	)	
Petitioner,	)	Appeal No.    03-0336
	)	Parcel No.    #####-1
v.	)	
	)	Tax Type:    Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF	)	
SALT LAKE COUNTY,	)	Tax Year:    2002
STATE OF UTAH,	)	
	)	Judge:    Phan
Respondent.	)	

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**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner:    PETITIONER REP., Attorney at Law  
For Respondent:    RESPONDENT REP. 1, Tax and Revenue Unit Chief, Salt Lake County  
                            Attorney's Office  
                            RESPONDENT REP. 2, Salt Lake County Deputy Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 2, 2003. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the market value of the subject property as set by Respondent for property tax purposes.
2. The year in question is 2002, with the lien date at issue January 1, 2002.

3. The subject property is parcel number #####-2. It is located at ADDRESS 1, CITY 1, Utah.

4. The Salt Lake County Assessor initially valued the subject property at \$\$\$\$ as of the lien date in question. Of this amount the Assessor had allocated \$\$\$\$ to the value of the land and \$\$\$\$ to the value of the building.

5. The Salt Lake County Board of Equalization reduced the value to \$\$. Of this amount the Board allocated \$\$\$\$ to the land and \$\$\$\$ to the building.

6. The subject property consists of a .65 acre lot with a rambler style residence. The residence was 19 years old. It had been constructed of good quality and was in good condition on the lien date. The residence has 2,858 above grade square feet with a 2210 square foot basement, 1989 square feet of which are finished.

7. The subject property is located within an environmentally contaminated area designated as a Superfund Site by the Environmental Protection Agency ("EPA") and is currently on the National Priorities List. It was proposed that the site be placed on the National Priorities List in December 2000. As so designated, the EPA intends to pay for the remediation of the property without contribution from the property owners. It appears that the environmental remediation of the subject property will eventually occur, but there are funding issues, which are as yet unresolved with the federal government. The source of the contamination was the ( WORDS REMOVED ). In addition, a second ( X ), the ( WORDS REMOVED ), operated nearby around the same time period. It was not discovered until 1992 that there might be an environmental problem in the area of the ( WORDS REMOVED ), after residences had been built in the area. Some soil testing was completed by the Utah Department of Environmental Quality in the area and it was determined that there was significant TOXIN and TOXIN levels. None of these early tests were completed on the subject property. The UDEQ continued to study the site, determine the impact on health and work to obtain funding for remediation.

8. Petitioners purchased the subject property in 1996. At that time of the purchase they

Appeal No. 03-0336

did not know that there was an environmental problem on the subject property as no disclosure concerning possible contamination had been made by the seller. They purchased the property with conventional financing. Petitioners testified that after they learned of the problem in YEAR, they attempted to discover if the seller knew about the contamination for purposes of determining whether to file a lawsuit against the seller for nondisclosure. It was Petitioners' conclusion from their investigation that the subject property had not been tested for environmental contamination prior to their purchase and that there had been no official notice from the EPA or UDEQ to the prior owners about contamination. The subject property was not tested until YEAR and the test indicated TOXIN in unsafe levels at some locations on the subject property. It was UDEQ's determination that the TOXIN contamination was sufficient to require remediation and the subject property was included with other properties in the Superfund site.

9. UDEQ went through the process of estimating the cost of clean up to the ( # ) properties involved, including the subject, and eventually issued a Proposed Plan for public comment in May 2002. A decision was made as to the extent of the clean up and a Record of Decision was issued in February 2003. The UDEQ estimated the clean up of the ( # ) properties would cost \$\$\$\$\$. In its estimate, UDEQ indicated excavation and removal of 12 inches of topsoil from the entire subject property except for the area covered by house, garage and driveway. The contaminated topsoil then would have to be shipped to a special landfill and the property replaced with clean soil and landscaping. The UDEQ bid was prepared in the normal course of business and relied on to begin the remediation process and for purposes of obtaining funding. WITNESS 1, Environmental Engineer, UDEQ, and Project Manager for the ( WORDS REMOVED ) Superfund Sites, testified that UDEQ was beginning some extensive soil testing to determine if there were certain sections of the various properties where the levels of contaminants were low enough that the soil would not have to be removed. After these tests UDEQ could determine if the actual costs for the clean up could be lowered below the estimate. Although WITNESS 1 indicated that it was possible that areas of the subject

Appeal No. 03-0336

property would not need any remediation, he testified that it was clear that portions of the subject property were sufficiently contaminated to require remediation.

10. The UDEQ did not separate its cost estimate to the portion of the \$\$\$\$ that would be applicable to the subject property. The estimate was for all ( # ) properties in the Superfund site. PETITIONER, who had some expertise in performing construction cost estimates, determined that of the total \$\$\$\$ UDEQ estimate, \$\$\$\$ would be the amount relating specifically to the subject property. It was Petitioner's position that the land value for the subject property be reduced to \$\$\$\$\$, based on the fact that the environmental cleanup would cost more than the value of land.

11. Respondent submitted an appraisal at the hearing prepared by WITNESS 2, State Certified Appraiser and employee of Salt Lake County. It was WITNESS 2's appraisal conclusion that the value of the subject property was \$\$\$\$\$. This is substantially higher than the value set by the County Board of Equalization. However, she argued that the County Board of Equalization had reached its value conclusion based on an error she had made at that time. In the appraisal WITNESS 2 considered sales of three properties all from the same immediate neighborhood of the subject property. However, none of the comparables chosen by WITNESS 2 were contaminated.

12. The adjustment that WITNESS 2 made for the fact that the subject property was contaminated while the comparables were clean ranged from \$\$\$\$ to \$\$\$\$ per comparable. The amount of the adjustment was based on \$\$\$\$ per acre, a number that she determined from the cost to remediate contaminated properties in CITY 2 and CITY 3, Utah. She considered the CITY 2 properties to be similar to the ( X ) site. It was also her testimony that sales in CITY 2 had remained consistent before and after the contamination was found and remediated.

13. The Respondent also submitted at the hearing statistical information concerning residential sales in the area the county designated as the neighborhood of the subject property. It was

Appeal No. 03-0336

Respondent's conclusion that the contamination and superfund designation had not adversely affect the market value of the properties in the neighborhood. However, this statistical information is of little value in this matter, as the neighborhood designated by Respondent encompasses a larger area than the ( # ) properties determined to be contaminated by UDEQ. In addition, like Petitioners when they purchased the subject property, other purchasers may not have been aware of the environmental problem at the time of the purchase. WITNESS 3, Appraisal Supervisor for Salt Lake County, testified that from their experience with the CITY 2 Superfund Site and a CITY 4 Superfund Site, it was the County's opinion that any impact on real estate values would be short term as the values would improve as a result of the clean up.

14. Respondent also presented hearsay information that one property owner in the Superfund area had been able to clean up his own property for a cost in the \$\$\$\$ range. However, this information was unreliable as the witness who testified concerning the amount was not sure of its accuracy.

15. From weighing the information presented in this matter the Commission concludes that the subject property is contaminated with unsafe levels of ( X ) and the governmental entities responsible for making the decision have determined that the remediation of this property is necessary. It is likely that this property will eventually be remediated by the UDEQ and EPA at no expense to the property owner, but until that time the value of the subject property is significantly impacted. The best evidence of the cost of cleanup of the Superfund Site is the estimate prepared by UDEQ. This is a matter under the expertise of UDEQ and the estimate was prepared in the usual course of UDEQ's function to facilitate remediation and obtain the appropriate funding. Petitioner has made a reasonable determination that \$\$\$\$ of the UDEQ's estimate pertains to the subject property. The evidence clearly supports Petitioners' contention that the cost to remediate the subject property is greater than the value of \$\$\$\$ placed on the land of the subject property by the County Assessor's Office. The adjustment made by WITNESS 2 in the appraisal submitted by Respondent does not take into consideration the cost to remediate the subject property. The adjustment is based on

Appeal No. 03-0336

purported costs of the UDEQ and EPA to remediate other properties. The Commission gives deference to the UDEQ in this matter as it has the expertise to make the determination as to the costs. Obviously the UDEQ has made a determination that the costs to remediate the site in which the subject property is located is much higher than the costs at the other sites to which the County has referred.

16. The Commission determines that the appropriate valuation methodology for this property would be to reduce the land value to \$\$\$\$\$. This methodology was relied on by the Commission and sustained by the Utah Supreme Court in the case of Schmidt v Utah State Tax Comm'n, County Board of Equalization, Salt Lake County, 980 P.2d 690 (1999). The evidence in this matter indicates that the cost to remediate the subject property is higher than the land value and may be higher than the combined value of the land and improvements. The Commission finds the adjustment made by Respondent for the environmental problems of the subject property is erroneous. Although the property had been placed on the Superfund National Priorities List as of the lien date, a proposed plan had not as yet been issued by the UDEQ. A prospective purchaser on the lien date, if they purchased the property at all, would do so at a significant reduction that is not adequately reflected in the County's appraisal. However, as in Schmidt there is still a value in use as Petitioners resided at the subject property and used it for its intended function without significant limitations. Based on this methodology the Commission finds that the fair market value of the subject property as of the lien date at issue is \$\$\$\$\$.

#### APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).

2. To prevail, the Petitioner must (1) demonstrate that the County Board of Equalization's 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*

Appeal No. 03-0336

*Lake County*, 943 P.2d 1354 (Utah 1997).

CONCLUSIONS OF LAW

In this matter the Respondent is entitled to a presumption of correctness as to only the value set by the County Board of Equalization. Respondent, did not request that the Board of Equalization's value be sustained, nor did it present evidence to support the Board of Equalization's value. It requested a higher value and has an equal burden of proof to support the higher value as Petitioner has to support the lower value. In this matter Petitioner has better met its burden of proof.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2002, is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Jane Phan  
Administrative Law Judge

Appeal No. 03-0336

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

**Notice of Appeal Rights:** You have ( # ) (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. 63-46b-13. 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 Ann. 59-1-601 and 63-46b-13 et. seq.

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