

03-0760  
PROPERTY TAX  
TAX YEAR: 2002  
SIGNED: 11-13-2003  
COMMISSIONERS: R. JOHNSON, P. DEPAULIS, M. JOHNSON  
ABSENT: P. HENDRICKSON  
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	:		
	:	<b>Formal Hearing Decision and Order</b>	
Petitioner,	:		
	:	Appeal No.	03-0760
v.	:		
	:	Parcel. Nos.	#####-1, #####-2
Board of Equalization of	:		
Weber County, Utah,	:	Tax Type	Property Tax
	:		
Respondent.	:	Tax Year	2002

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Presiding:  
Palmer DePaulis, Commissioner  
Jane Phan, Administrative Law Judge

Appearances:  
For Petitioner: PETITIONER  
For Respondent: RESPONDENT REP., Real Estate Manager, Weber County

STATEMENT OF THE CASE

Petitioner timely and properly filed an appeal of the value established by the Respondent for the subject properties, for the tax year 2002. This matter was argued at a Formal Hearing on September 29, 2003.

FINDINGS OF FACT

Based on the evidence presented at the Formal Hearing in this matter, the Commission makes the following findings of fact:

1. Petitioner is appealing the market value set by Respondent for the subject properties as of the lien date January 1, 2002.

2. The subject properties, parcels number #####-1 and #####-2, are located at ADDRESS, CITY Utah.
3. Parcel number #####-1 had originally been valued by the Weber County Assessor at \$\$\$\$ as of the lien date at issue and parcel #####-2 at \$\$\$\$\$. The County Board of Equalization sustained the values of both parcels.
4. The subject parcels are vacant properties that are located adjacent to each other. Each property has narrow street frontage. Parcel #####-1 has 50 feet of frontage on STREET and is approximately 210 feet deep. Parcel #####-2 has only 37 feet of frontage and is 212 feet deep. The properties are zoned for commercial development.
5. The parties were in agreement that in order to development the parcels into a commercial property they had to be combined, because separately each parcel was too small for development.
6. The subject properties were located in a city AREA. The street had recently been widened with curb and gutter. Access to the subject property had been reduced during this construction. There had been dilapidated houses across the street. As part of the redevelopment the houses were torn down and replaced with a new city public works building. However, the other developed properties in the immediate area are still residential properties. In addition there are other vacant lots in the area. Petitioner indicates that for years, people have illegally been using the subject properties as a site to dump their trash. Petitioner, who lives out of state, must at his own expense remove the trash that others have dumped on the subject property.
7. Petitioner had entered into an agreement on January 3, 2003, with a real estate agent to sell the property for half of the value set by Respondent. However, the offer to sell was never advertised or placed on the Multiple Listing Service. Petitioner acknowledged at the hearing that if the two parcels were combined together, the combined value was probably as high as the value set by Respondent. It was Petitioner's argument that these parcels should each be valued separately, not as a combined unit. Separately the parcels are not

developable and would have significantly less value. Petitioner did not provide evidence of what the value would be.

8. Respondent pointed out that back in 1998 Petitioner had listed the combined parcels for sale for \$\$\$\$\$. However, there were no buyers at that price. The list price is significantly higher than the combined value set on the subject property for the 2002 year at issue.
9. Respondent's representative acknowledges that Respondent had valued these two parcels on a combined basis, indicating that the highest and best use of these parcels was as one economic unit. He concurred with Petitioner that separately neither parcel had enough frontage for commercial development and if each parcel was valued separately they would have to be valued as non-developable properties with significantly less value than the value set by Respondent. Respondent did not offer an estimate of what the value would be if the two properties were valued as two separate not developable lots. It was his opinion that if valued as one economic unit the properties were actually undervalued.
10. Respondent's representative indicated that the county routinely combined associated parcels when they determined they would be used as one economic unit. Respondent's representative indicated that this sometimes resulted in a higher value, but also could result in a lower value depending on the circumstances.

#### 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 provide 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 (1).)

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).)

### DISCUSSION

The parties in this matter have little dispute as to the facts and have presented a legal question to the Commission. Respondent has valued the two parcels as one economic unit, arguing the properties highest and best use is on a combined basis. Petitioner argues that they are two separate legal parcels and should be valued as separate parcels. Respondent indicates that it is a common practice in Weber County and he is aware of other counties that will combine associated parcels to determine the value. Both sides acknowledge that if separated the parcels are non-developable and have little value.

Although the issue of whether these parcels should be valued as two separate parcels or combined as one economic unit appears to have wide spread application, the Commission is not aware of a prior decision directly on point. It is common for appraisers to consider the economic unit in developed property in determining an income approach value when parking lots or portions of the unit are on separate parcels. In addition the principal of “assemblage” is clearly recognized in the appraisal industry as part of the highest and best use analysis.<sup>1</sup> This issue before the Commission concerns adjacent undeveloped parcels that are legally under the same ownership. Theoretically, the parcels at issue could be sold separately and not developed together, but economically this is unlikely. The most reasonable expectation as of the lien date at issue is that the two parcels would be used as one economic unit. The highest and best use test for legal permissibility in this case is easily met where the parcels are under a single ownership. In contrast, even identical parcels, but which are under separate ownership, would require a

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<sup>1</sup> The Appraisal Institute discusses assemblage stating, “Certain parcels can achieve their highest and best use only as part of an assemblage. In such a case the appraiser must either determine the feasibility and probability of assembly or make the highest and best use determination and other appraisal decisions on the assumption that such an assembly would be made.” From The Appraisal of Real Estate, Twelfth Ed., p. 313.

transfer of ownership in order to effect an assemblage. Under that scenario, the parcels might be assessed at lower values since their assemblage into a single developable parcel would not meet the test for legal permissibility.

The Commission also determines that it would be poor policy to allow the potential for property owners to divide properties creating an artificial situation to distort the market value solely for the purpose of reducing tax assessments.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the value as set by the County Board of Equalization for the subject parcels, for the tax year 2002. It is so ordered.

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

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

BY ORDER OF THE COMMISSION:

The undersigned Commissioners have reviewed this matter and concur in this decision.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
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. §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

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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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