

03-0842,43  
Locally Assessed Property  
Signed 02/03/2004

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 Nos. 03-0842, 03-0843
	)	Parcel Nos. #####-1, #####-2
v.	)	
	)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION	)	
OF SALT LAKE COUNTY,	)	Tax Year: 2002
STATE OF UTAH,	)	
	)	Judge: Davis
Respondent.	)	

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**Presiding:**

G. Blaine Davis, Administrative Law Judge  
Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER  
For Respondent: RESPONDENT REPRESENTATIVE, Deputy, Salt Lake County  
Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 12, 2004. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.
2. The year in question is 2002, with a lien date of January 1, 2002.
3. The subject property consists of two separate parcels of land comprising a total of

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11.05 acres of undeveloped land located on the ( X ) of STREET and the HIGHWAY.

4. The Salt Lake County Assessor initially valued the subject property at \$\$\$\$\$ as of the lien date in question.

5. The Salt Lake County Board of Equalization sustained a value of \$\$\$\$\$.

6. Petitioner originally acquired the property in May of 2000. That purchase included three (3) parcels of land, two (2) of which are at issue in this appeal. Respondent's appraisal states the "purchase price was \$\$\$\$\$ or \$\$\$\$\$ per square foot of land area." However, when the purchase is divided by the number of square feet in the property, it results in a cost of less than \$\$\$\$\$ per square foot. The purchase price included a third parcel of land, which was not appealed to the Commission, which consisted of .08 acres, or 3,480 square feet. Evidence was not presented as to the separate value determined for that property by the Salt Lake County Board of Equalization. However, the appraisal presented by each of the parties herein, included the value for that parcel of land. Therefore, in this decision, it will be necessary to determine the value of the land on a per square foot basis, and then apply that to the two parcels of land that were appealed and are the subject of this proceeding.

7. Following the acquisition of the land in May of 2000, Petitioner has tried to find an anchor tenant such as a COMPANY A or COMPANY B around which a shopping center could be developed. However, Petitioner has not been able to find any substantial anchor tenant willing to commit to the development of the property.

8. The primary reason for the difficulty in acquiring an anchor tenant has been

because of access problems which were not foreseen by Petitioner when the property was acquired. Even though the property sits on a major corner, the Utah Department of Transportation (UDOT) has given permission for only very limited access to the property. UDOT has prohibited any access from the HIGHWAY, but has granted two separate accesses from STREET. For the south access, which is nearest the intersection, UDOT will permit only "right in-right out" access, which means people coming into the property can turn right into the property at that access, and can turn right when they come out of the property. However, they cannot turn left either coming into the property from STREET or coming out of the property onto STREET. For the north access, UDOT will permit full access so that persons can turn left or right coming into the property or out of the property. Nevertheless, UDOT will not permit a separate semaphore light to go in at the north access, even though it is directly across the street from a subdivision entrance, and even though on the south side of HIGHWAY UDOT has permitted a light to go in at approximately the same distance from the intersection. This may be because south of HIGHWAY is in the CITY 1 limits, whereas north of HIGHWAY is in the CITY 2 limits.

9. Petitioner had the property listed for lease with COMPANY C, a large commercial land and property company for a period of one year, but they were not able to obtain anyone to lease the property. Petitioner did have a letter of intent from COMPANY A for a portion of the property, but based upon the access problems, COMPANY A abandoned its intention to place a ( X ) store at that location.

10. Petitioner testified that because he is not an experienced developer, he paid an

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excessive price for the property, and the property has become a very substantial financial drain upon him and his resources.

11. Petitioner presented an appraisal prepared by APPRAISER, a licensed appraiser in the State of Utah. APPRAISER based his appraisal upon six separate comparable sales of undeveloped land all located in the ( X ) part of the Salt Lake Valley. Those sales were made at prices ranging between \$\$\$\$ per square foot to \$\$\$\$ per square foot. APPRAISER made adjustments to those sales prices for location, size, topography, zoning, and appeal. Following those adjustments as determined by APPRAISER, the comparable sales would indicate a value for the subject property ranging between \$\$\$\$ per square foot to \$\$\$\$ per square foot. APPRAISER determined that the best three comparables were his no. 4 with an adjusted per square foot value of \$\$\$\$\$, no. 5 with an adjusted per square foot value of \$\$\$\$\$, and no. 6 with an adjusted per square foot value of \$\$\$\$\$. Based upon those comparable sales, APPRAISER determined a reasonable fair market value for the subject property would be \$\$\$\$ per square foot. APPRAISER therefore determined that the fair market value for the whole parcel of land was \$\$\$\$\$. \$\$\$\$\$ of that value is allocable to the parcel which is not under appeal in this proceeding.

12. Respondent presented an appraisal prepared by RESPONDENT REPRESENTATIVE, a Deputy Salt Lake County Assessor, and a licensed appraiser in the State of Utah.

13. RESPONDENT REPRESENTATIVE'S appraisal used the same six comparable sales used by Petitioner's appraiser. In addition, RESPONDENT REPRESENTATIVE used a

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seventh comparable sale which was not used by Petitioner's appraiser. That sale no. 7 used by RESPONDENT REPRESENTATIVE sold for a price of \$\$\$\$ per square foot.

14. RESPONDENT REPRESENTATIVE made adjustments for the same factors as did APPRAISER, but he also made substantial adjustments for effective demand.

15. Based upon all of the adjustments made by RESPONDENT REPRESENTATIVE, he arrived at an adjusted sales price per square foot in a range between \$\$\$\$ per square foot and \$\$\$\$ per square foot. He determined that sales no. 3 and no. 7 required the least net adjustment and were considered by him to be the most comparable to the subject.

16. Based on those numbers, RESPONDENT REPRESENTATIVE determined the subject value to be \$\$\$\$ per square foot, or a total value of \$\$\$\$, which did not include the third parcel of land which is not at issue in this proceeding.

#### 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'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).

Because no evidence was presented by either party in support of the original value

determined by the Salt Lake County Board of Equalization, that value is not entitled to a presumption of correctness and both parties have an equal burden of establishing the correct value of the property by a preponderance of the evidence.

#### DISCUSSION

After reviewing each of the appraisals submitted by the parties, each of them appear, on their face, to be reasonable determinations of fair market value. Petitioner's appraiser did select a value that was near the lower end of the adjusted sales price per square foot determined in his appraisal, while Respondent's appraiser selected a final adjusted sales price per square foot that was near the high end of the adjusted sales prices per square foot. Petitioner's appraiser relied primarily upon comparable sales nos. 4, 5 and 6, while Respondent's appraiser relied upon comparable sales nos. 3 and 7. An analysis of those five different sales which the two appraisers thought were most similar to the subject property, indicate that comparable sale no. 5 is the only one which is of a similar size. Comparable sales nos. 3, 4, 6 and 7 were all substantially smaller in size, with most of them being less than one-half the size of the subject property. However, comparable no. 5 is only slightly more than one-half of an acre larger than the subject property. Comparable sale no. 5 is also the comparable sale that is closest in the adjusted sales price per square foot to the price actually selected by Petitioner's appraiser as representative of the reasonable fair market value of the subject property. The other two sales selected by Petitioner's appraiser are close to that adjusted sales price per square foot and bracketing the number selected, i.e., one sale indicated a higher value and one sale indicating a lower value than the price per square foot selected by Respondent's appraiser.

Respondent's appraiser also added an additional adjustment for effective demand which was not used by Petitioner's appraiser. While that is a factor that is reasonable for an appraiser to use to make an adjustment, it is a factor that is very difficult to quantify and is very subjective. It is also a factor which may well be merged with the location adjustment, and which some appraisers may consider in the overall location adjustment. That appears to be the case for Petitioner's appraiser. In other words, the reason the location is better may be because there is a greater demand for the property.

Respondent's appraiser testified that he made the location adjustments based solely upon traffic count, which is not an unreasonable basis for making a location adjustment for a commercial property. However, that traffic count was not itemized by Respondent's appraiser, and the Commission believes it is likely that the traffic count on the HIGHWAY would be greater than the traffic count on STREET. The traffic on HIGHWAY would find it very difficult to shop at a retail establishment which may be built on the subject property, primarily because of the access issues described above. The traffic on the HIGHWAY may well by-pass any business on the subject property and continue on to ( X ) which is further west and north of the subject property. Therefore, although traffic count of STREET may add value to the property, traffic count on the HIGHWAY would add less additional value. Accordingly, if value is added to the property for cars that are traveling on the HIGHWAY but may not have reasonable access to the property, it would be like adding value to a property that backs on to a freeway but does not have a freeway exit and entrance within a reasonable proximity to the property.

In addition, Respondent's appraiser did not attempt to make any adjustment for the access issues described by Petitioner. Although there was very little testimony on the issue, it does not appear that the other comparable properties would have similar access issues when they are developed. Therefore, without consideration being given to those issues, the Commission finds the lower comparable sales prices determined by Petitioner's appraiser are more likely to be representative of the fair market value of the subject property.

Accordingly, the Commission finds that the values determined by Petitioner's appraiser more accurately represent the fair market value of the subject property than do those determined by Respondent's appraiser. This is primarily because of the adjustments indicated above, including the fact that comparable sale no. 5 was the only one selected and used by the appraisers which is approximately the same size as the subject property.

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 \$\$\$\$\$ per square foot. Therefore, parcel no. #####-1 is determined to have a fair market value of \$\$\$\$\$. Parcel no. #####-2 is determined to have a fair market value of \$\$\$\$\$. The Salt Lake County Auditor is hereby ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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G. Blaine Davis  
Administrative Law Judge



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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 \_\_\_\_\_, 2004.

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 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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