

03-1343
Locally Assessed Property Tax
Signed 05/18/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)
) FINDINGS OF FACT, CONCLUSIONS
Petitioner,) OF LAW, AND FINAL DECISION
)
v.) Appeal No.: 03-1343
)
BOARD OF EQUALIZATION OF) Parcel Nos.: #####-1
SAN JUAN COUNTY,) Tax Type: Property Tax/Locally Assessed
STATE OF UTAH,) Tax Year: 2003
)
Respondent.) Judge: Chapman

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 notice, 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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE 1, San Juan County Assessor
RESPONDENT REPRESENTATIVE 2, San Juan County Deputy
Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 10, 2004. Based upon the evidence and testimony presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.
2. The year in question is 2003, with a lien date of January 1, 2003.
3. At issue is the fair market value of Parcel No. #####-1 (“subject property”) as of the lien date.
4. The subject property is located in CITY, San Juan County, Utah.
5. The subject property is a one-acre parcel of vacant land that is commercially zoned. It is located on (X) in the SUBDIVISION. For the 2003 tax year, this parcel was assessed at \$\$\$\$\$, a value that the County BOE sustained.
6. PETITIONER is considered an expert witness on matters of land prices and the planning of land uses in CITY, Utah, but is not considered an expert witness on matters of property appraisal.
7. The County reappraised the subject property for 2003 property tax purposes, increasing its assessed value from \$\$\$\$\$ for the 2002 tax year to \$\$\$\$\$ for the 2003 tax year. From 1994 to 2003, the assessed value of the property increased from \$\$\$\$\$ to \$\$\$\$\$, an increase of over 500%. The Petitioner purchased the subject in 1994 for \$\$\$\$\$. The 2003 assessed value is over 700% greater than the 1994 purchase price.
8. The Petitioner testified that in the mid-1990’s, a number of jobs were lost in CITY, which resulted in a depressed economy and real estate market. The Petitioner also provided evidence to show that the number of students enrolled in the (X) decreased between 1996 and 2002.

9. The subject property is located on the (X) side of (X). Across the (X) from the subject property is the (X). The Petitioner submitted a photograph showing the subject property to be at a lower elevation than the (X), which the Petitioner estimates to be eight to twelve feet higher than the subject property. The Petitioner submitted a letter from COMPANY in which (X) estimated that it would cost \$\$\$\$\$ to bring the subject's elevation up even with the (X).

10. The subject property may be accessed through the SUBDIVISION. Even though the subject property is commercially zoned and located within approximately 300 yards of commercially developed land, the County has determined that the current highest and best use of the subject property is as residential property.

11. The County presented evidence of five lots that had sold in CITY between June 2002 and August 2003. The lots ranged in size from 0.25 acres to 2.85 acres and sold at prices ranging from \$\$\$\$\$ to \$\$\$\$\$.

12. The subject property does not currently have city utility hook-ups. The Petitioner and the County both provided information showing that fees to hook-up utilities in CITY run approximately \$\$\$\$\$ for a water hook-up, \$\$\$\$\$ to \$\$\$\$\$ for a sewer hook-up, and \$\$\$\$\$ for a electricity hookup, with an additional \$\$\$\$\$ to \$\$\$\$\$ cost for installation of the electrical hook-up.

13. Because city sewer utility is unavailable for the subject, the Petitioner would have to build a septic system on his property or provide above-ground waste removal, if the property were used for residential purposes. The Petitioner testified that the cost of installing a septic system on his property would cost between \$\$\$\$\$ and \$\$\$\$\$.

14. Two property owners have signed documents indicating that they would sell their one-acre parcels in SUBDIVISION to the Petitioner for \$\$\$\$\$ and \$\$\$\$\$, respectively. (X) has stated that he would sell Parcel No. #####-2 for \$\$\$\$\$. The Petitioner stated that this parcel has an advertising sign on it that currently advertises a (X). He estimates that this improvement currently generates between \$\$\$\$\$ and \$\$\$\$\$ of revenue a year. (X) has stated that she would sell parcel No. #####-3 for \$\$\$\$\$. This latter parcel, like the subject, is unimproved.

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 in an appeal concerning the fair market value of its property, 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).

3. Pursuant to Utah Code Ann. §59-2-102(12) and effective on the lien date of the year at issue, "fair market value" is defined as:

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.

4. To prevail in an appeal concerning the equalization of property, the Petitioner must show “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. §59-2-1006(4)(b).

DISCUSSION AND CONCLUSIONS OF LAW

At issue is the fair market value of a one-acre parcel of vacant land in CITY, Utah. The County has reappraised the parcel and assessed it at a value of \$\$\$\$\$ for the 2003 tax year. Besides asserting that the value of the subject property is less than \$\$\$\$\$, the Petitioner also asserts that the parcel should be assessed at the \$\$\$\$\$ value at which one-acre, vacant parcels across the road from the subject property were assessed for the 2003 tax year. Accordingly, the Petitioner has asserted both a fair market value issue and an equalization issue.

For purposes of the Formal Hearing, PETITIONER, the Petitioner, requested that the Commission recognize him as an expert witness in matters of land prices and the planning of land uses in CITY, Utah. PETITIONER stated that because of his educational background in urban planning and the unique knowledge he has gained as CITY’S commercial development director, he should be considered an expert in these matters. The County did not object to the Commission finding the Petitioner an expert on these matters, but did object to him being considered an expert on appraisal techniques and the appraisal of property. The Petitioner stated that he did not claim to be an expert on the appraisal of property. For these reasons, PETITIONER is deemed, for purposes of this hearing, to be an expert witness concerning land prices and the planning of land uses in CITY.

Prior to discussing the fair market value and equalization issues, the Commission takes the opportunity to address the difference between the assessment of a property and the appeal of that property's assessment. The County has stated that it has assessed the subject property using the same land guide it used to assess all other vacant properties in CITY and that its tax system does not allow for the individual assessment of property. The assessor should assess any property, including the subject property, in a manner consistent with its assessment of other similarly situated properties. However, once a property owner has appealed that assessment, individual appraisal information related to the property is usually the best information with which to determine its fair market value. The fact that a property was assessed in a manner consistent with the county's mass appraisal system is rarely, if ever, convincing evidence of that property's fair market value in an appeal setting.

The Petitioner has also submitted evidence and testimony concerning facts that, even though they may be true, bear little, if any, weight in determining the subject property's fair market value as of the lien date. For example, the Petitioner has shown that the subject property's assessed value has increased more than 500% since 1994 and that its 2003 assessed value is over 700% higher than the price the Petitioner paid for the property in 1994. First, the nine years between the sale of the property and the lien date at issue is too great a period for the 1994 sale price to have any relevancy in determining the property's value as of the lien date. It is unknown if the price paid in 1994 or its assessed value that year was actually the property's fair market value at that time. Furthermore, Utah law only does not provide for a reduction in value because the assessed value has increased at a greater rate of appreciation than that shown by other economic factors. Even though

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certain economic factors in the CITY area may suggest that the subject's property rate of appreciation may be high, the assessment will be sustained unless it is shown that the fair market value for the property as of the lien date is incorrect or that similar properties are assessed at a lower value.

In addition, the Petitioner argues that reappraisal of the subject property was unnecessary in 2003 because the assessed values of the subject and other properties have gone up each year prior to 2003. This fact, however, has no bearing on the legality of reappraising a property or increasing the assessed value each year. In fact, Utah Code Ann. §59-2-303.1 provides that a county assessor shall **annually** update property values based upon a review of current market data. Concerning "reappraisal," the statute provides that a county assessor shall complete a detailed review of property characteristics at least once every five years. Accordingly, a county assessor who increases assessed values every year would be compliant with Utah law, if current market data warranted such action.

Fair Market Value. The County has valued the subject property as a residential property and believes that its current topography, although below the grade of (X), is sufficient for residential development with access through the SUBDIVISION. The County states that a house directly west of the subject property is located on a lot that is similarly "below-grade." Although the SUBDIVISION was platted in the 1950's, testimony shows that few homes actually exist in the subdivision. Although a sewer line runs along the opposite side of (X), it is not currently available on the side of the (X) on which the subject is located.

From the evidence and testimony provided at the Formal Hearing, the Commission finds that the current highest and best use of the property is dependent upon its access from the SUBDIVISION, not from (X). The Petitioner has presented unrefuted evidence that it would cost \$\$\$\$\$ to bring the subject up to the grade of the (X). There is no evidence to suggest that a one-acre parcel with (X) frontage is worth more than \$\$\$\$\$, so a use dependent on (X) access is not currently feasible. For these reasons, the Commission finds that the property's highest and best use is as residential property with access from subdivision, not the (X), and that the property should be valued accordingly.

The County presented evidence of five lots in CITY that sold between June 2002 and August 2003. The lots ranged in size from 0.25 acres to 2.85 acres and sold at prices ranging from \$\$\$\$\$ to \$\$\$\$\$. Comparables #1 and #3 are located near the subject but on the other side of (X). Comparables #2, #4, and #5, however, are in more established or traditional residential areas of CITY that appear to be more desirable than the subject for residential purposes. Accordingly, the Commission places little, if any, weight on these comparables in showing the fair market value of the subject property.

Comparable #1 is a 2.85 parcel of vacant land that sold for \$\$\$\$\$ in July 2003, which equates to approximately \$\$\$\$\$ per acre. The comparable is located next to (X) and was purchased by the City of CITY. Like the subject, this comparable is commercially zoned, but is in an area mainly used for residential purposes. Also like the subject, this comparable had no utility hook-ups. Unlike the subject, however, the comparable is on the side of (X) where a sewer hook-up is feasible. The Petitioner contends that the seller forced the city to pay more for the land than its

fair market value. Although larger parcels, such as this comparable, typically sell at a lesser amount per acre than a smaller property, such as the subject, this comparable is nevertheless vacant and undeveloped, like the subject, and located in close proximity to the subject.

Another sale in close proximity to the subject is Comparable #3, a 0.91-acre lot located on the opposite side of (X) from the subject property. However, this comparable, unlike the subject, was neither vacant nor undeveloped at the time of its sale. A small home was located on the property, which was subsequently removed and replaced with a mobile home. Two sheds were also located on the property and were assessed at \$\$\$\$\$ for the 2003 tax year. In Exhibit R-3, the County estimates that these improvements added approximately \$\$\$\$\$ of value to the comparable. Adjusting the \$\$\$\$\$ sales price for the improvements leaves a value of \$\$\$\$\$ for the subject.

Further adjustments, however, are necessary to estimate the value of the subject property. At the time of its sale, comparable #3 was developed with multiple utility hook-ups (water, sewer, and electrical) and was accessible from (X). The County estimated that the hook-ups added \$\$\$\$\$ of value to the comparable. Deducting this amount from the previously derived \$\$\$\$\$ adjusted value results in an adjusted value of \$\$\$\$\$ for the subject property.

However, the County has not provided adjustments for the comparable's access to a sewer line. The Petitioner estimated that it would cost between \$\$\$\$\$ and \$\$\$\$\$ to build a septic system, costs that the County did not refute. Deducting \$\$\$\$\$ from the \$\$\$\$\$ adjusted value results in an estimated \$\$\$\$\$ value for the subject property. Further adjustments for the comparable's accessibility from (X) and its multiple utility hook-ups might also be reasonable and would further

reduce the estimated value of the subject property. In any case, the superiority of this comparable requires significant adjustments and calls into question the assessed value of the subject property.

From these two comparable sales alone, the Commission would find that the value of the subject property should be between \$\$\$\$\$ and \$\$\$\$\$. However, the Petitioner has presented evidence of the price at which he could purchase two different one-acre lots in the same subdivision as the subject (Exhibits P-9 and P-10). Although the persons signing these letters were not available to cross-examine at the Formal Hearing, the County did not object to the Commission admitting the evidence. Exhibit P-9 shows that a lot improved with an advertising sign (“(X)”) was offered for sale at a price of \$\$\$\$\$. This sign improvement apparently generates at least \$\$\$\$\$ in income per year. If this income were capitalized at %%%%, the improvement would appear to add approximately \$\$\$\$\$ to that property’s value. Accordingly, the (X), if unimproved, might be worth approximately \$\$\$\$\$, based on this information. Exhibit P-10 shows that another unimproved lot in the subdivision (“(X)”) was offered for sale at \$\$\$\$\$. In its totality, this information would suggest that the subject property has a fair market value no higher than \$\$\$\$\$.

The Petitioner maintains that the subject property has a fair market value of approximately \$\$\$\$\$. However, neither party has submitted any evidence to suggest that a one-acre residential parcel in CITY would sell for or be offered for sale at the price the Petitioner requests. The only sales submitted were of properties with superior features, and neither party has submitted an individual appraisal of the subject property. Nevertheless, the evidence submitted is sufficient to call into question the subject property’s \$\$\$\$\$ assessed value and, based on this evidence, the Commission finds that \$\$\$\$\$ appears to be a reasonable fair market value for the subject property.

Equalization. The Petitioner contends that the County should not be allowed to assess the one-acre subject property at a value above \$\$\$\$\$ because the County has assessed other similar properties at \$\$\$\$\$ per acre. The County's landguide (Exhibit R-1) shows that the County has assessed certain acreage at \$\$\$\$\$ per acre, but only that portion of a parcel that is greater than one acre in size. The \$\$\$\$\$ per acre assessment does not appear to have applied to parcels of one acre or less in size. There is no evidence that the County has assessed other one-acre residential lots in the City of CITY at a fair market value of \$\$\$\$\$. Accordingly, the Petitioner has not shown sufficient evidence for the Commission to "equalize" his fair market value to \$\$\$\$\$. Accordingly, the equalization argument is denied.

In summary, the Commission rejects the Petitioner's equalization argument. However, the Commission finds that the information provided at the Formal Hearing shows \$\$\$\$\$ to be a reasonable fair market value for the subject property for the 2003 tax year.

DECISION AND ORDER

Based on the foregoing, the Commission finds that the fair market value for Parcel No. #####-1 for the 2003 property tax year should be reduced from \$\$\$\$\$ to \$\$\$\$\$. The San Juan County Auditor is ordered to adjust its records in accordance with this decision. It is so ordered.

DATED this _____ day of _____, 2005.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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

DATED this _____ day of _____, 2005.

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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