

03-1384  
LOCALLY ASSESSED PROERTY  
TAX YEAR: 2003  
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
	)	<b>OF LAW, FINAL DECISION</b>
	)	<b>AND</b>
Petitioner,	)	<b>PROTECTIVE ORDER</b>
	)	
v.	)	Appeal No.    03-1384
	)	Tax Type:    Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF	)	Parcel No    #####
RURAL COUNTY,	)	Tax Year:    2003
STATE OF UTAH,	)	
	)	Judge:        Phan
Respondent.	)	

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**This Order may contain confidential “commercial information” within the meaning of Utah Code Sec. 59-1-404, and such information is protected from disclosure pursuant to the Protective Order included herein.**

Presiding:  
    Jane Phan, Administrative Law Judge

Appearances:  
    For Petitioner: PETITIONER  
    For Respondent: RESPONDENT REP., RURAL COUNTY Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 24, 2004. A Protective Order and Notice to Submit Response was issued on July 28, 2004, to which, Petitioner submitted a response dated August 2, 2004, and Respondent submitted a Request for Reconsideration on August 5, 2004. Petitioner was given the opportunity to respond to the Request and did so on August 23, 2004. Based upon the evidence and testimony presented at the hearing and the submissions of the parties, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the subject property as determined by Respondent.
2. The lien date at issue is January 1, 2003.
3. The subject property is parcel no. ##### and is located in CITY 1.
4. The subject property consists of 4.70 acres of land, which has been used for many years and continues to be used for a horse pasture. CREEK runs through a corner of the subject property. According to Petitioner the portion of the property near the creek would likely be considered wetlands and not be suitable for development.
5. For the lien date at issue, Petitioner requested on the appeal form that the value of the property be lowered to \$\$\$\$\$. At the hearing Petitioner requested that the value be lowered to \$\$\$\$\$. The County Assessor had valued the subject property at \$\$\$\$\$ and the County Board of Equalization sustained the value.
6. Petitioner bases his requested value of \$\$\$\$\$ on the value that had been set on the property for prior years. However, the Commission notes that the valuation notices indicated the 2002 value was also \$\$\$\$\$. Petitioner indicated that the property should be valued based on its use as a horse pasture and open space. He indicated that he did not want to sell the property for development as he wanted to preserve the open space and there was a need in the area to do so.
7. Petitioner's value request of \$\$\$\$\$ was based on two written offers to purchase the subject property. Both prospective purchasers indicated that they would purchase the property to use as horse pasture. However, Petitioner has never listed the property for sale to the general public.
8. Respondent's value was based on sales of comparable property. In fact, Respondent presented eleven sales in the immediate vicinity of the subject property that clearly supported the County value for the

subject property. Three of the sales submitted came from Tax Commission's Real Property Transfer Survey. In the past the Commission has considered this information to be confidential. For that reason and the newly enacted Utah Code Sec. 59-1-404, the Commission had concluded that Petitioner could not receive copies of these three comparables and Petitioner has not seen them or been able to rebut their applicability to the valuation of the subject property. Because these transfer survey comparables were not given to Petitioner the Commission will not consider them in making its determination as to the value of the subject property. The Commission is currently reconsidering whether this type of information is confidential under the new statutory provisions, but finds that decision to be irrelevant in this particular matter, as there were numerous other sales that supported Respondent's position.

9. For the remaining eight comparable sales, some of the purchasers purchased the property for single-family residences and some were purchased for commercial or condominium development. These eight comparable sales had sold for between \$\$\$\$ per acre to \$\$\$\$ per acre. Most of these sales were located in the same plat as the subject property.

10. The actual sales in the immediate area significantly outweighed the evidence submitted by Petitioner concerning the fair market value of the subject property. It is clear from the number of sales, that there is a strong market for land in the immediate area of the subject property and the land is generally being purchased for development of either single family residences on large lots or more dense residential or condominium development. The sales indicate that if Petitioner was to sell the subject property without restriction on the open market, the purchaser would most likely be looking to develop the property.

11. In addition to the valuation issue, a second issue arose during the hearing concerning whether the Respondent should have given Petitioner its comparable sales prior to the Formal Hearing. Considering the newly adopted confidentially provisions at Utah Code Sec. 59-1-404, Respondent's representatives indicated

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that they did not give the sales information to Petitioner during the proceeding at the County Board of Equalization or prior to the Formal Hearing, as some of the comparables had been purchased for commercial development. Respondent's representatives indicate that Petitioner stated he would publish the information. In a post hearing submission, Petitioner states that he had never indicated that he would publish the information. Regardless, the provisions at Utah Code Sec. 59-1-404(4) indicate that the County would need to "take action to provide that any commercial information disclosed during the action or proceeding may not be disclosed by any person conducting or participating in the action or proceeding outside the action or proceeding." For this reason, the county may want to consider having property taxpayers sign a confidentiality agreement or affidavit stating they will not disclose commercial information.

#### 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.)

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 . . . (Utah Code Ann. Sec. 59-2-1006(1).)

#### CONCLUSIONS OF LAW

1. 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). In this matter Petitioner has clearly not met his burden of proof and the County's value was well supported by the evidence.

2. In determining a property's value the Commission must consider the fair market value of the property, which is what the property would sell for on the open market between a willing buyer and willing seller and taking into consideration the current zoning or eminent zoning changes. Utah Code Ann. Secs. 59-2-103 & 59-2-102(12). The evidence indicates that there is clearly a market for property in the area and that properties are generally being purchased for some type of residential or commercial development. There is no provision in the law to limit the value of a property to its value as a horse pasture unless the properties qualified for greenbelt under the Farmland Assessment Act. For the year at issue the property did not qualify for greenbelt. In his post hearing filing, Petitioner argues that land used for agricultural purposes may be assessed according to its value for agricultural use without regard to the value it may have for other purposes. However, the legislature has specifically prescribed criteria which must be met to qualify for "greenbelt" valuation, which is valuation based on agricultural use. For the lien date, this property did not

qualify. The statutory requirements for greenbelt are set out in the Farmland Assessment Act, Utah Code Ann. Sec. 59-2, Part 5.

3. Additionally, the Commission cannot place a reduced value on the subject property based on the perceived need for open space unless the proper steps are taken to deed the property to an appropriate trust or conservatory. Petitioner has not taken the proper steps to do so. Petitioner argues that the tax assessment should be based on consideration of the “Best Use” of land and that in this case tax policy should protect open space in RURAL COUNTY. However, the law requires that the property tax assessment be based on the fair market value of the subject property. Fair market value is what the property would sell for on the open market and determined from the value of the sales comparables in the area. To value Petitioner’s property as he requests would require a change in both the State Constitution as well as the Utah Statute. The Tax Commission does not make the laws and must enforce them as written. With the eight sales that the Commission has accepted in this matter as evidence, Respondent has supported its assessed value for the subject property.

4. Considering the issue of whether the County should have given Petitioner the comparable sales information during the County hearing or prior to the Formal Hearing, the Commission looks at the newly adopted Utah Code Sec. 59-1-404 and concludes that in light of that section, the County’s actions were not inappropriate. The Utah Legislature apparently perceived a need to protect commercial information in property tax appeals and adopted this code section. Subsection (4) of the statute indicates that the County must take action to prevent a party participating in the proceeding from disclosing the commercial information outside the proceeding. Based on this statute the County should take some affirmative action to see that participants in its hearings do not disclose confidential commercial information, such as having the property owner sign an affidavit or some type of a confidentiality agreement.

5. It is the Commission's position that a property owner's constitutional right to due process and statutory provisions regarding discovery in the administrative hearing process require that a taxpayer be able to view and respond to all valuation evidence submitted by the County at the Tax Commission Formal Hearing. For that reason, the Tax Commission has concluded that it must disallow or not consider evidence that was not reviewed by the property owner. Therefore, the Commission did not consider the information contained in the real property transfer surveys.

6. Respondent had requested reconsideration of the Tax Commission's determination, in its Protective Order and Notice to Submit Response, dated July 28, 2004 ("Protective Order"), that the Real Property Transfer Surveys were confidential and protected pursuant to Utah Code Ann. 59-1-404. To the extent the Protective Order held that the Real Property Transfer Surveys were confidential and protected, the Commission hereby reverses the Protective Order and instead finds that it is not an issue significant in this decision, but may have substantial impact for the Counties. For these reasons the Commission declines to make a determination at this time on whether the Real Property Transfer Surveys may be used as evidence in property appeal hearings before the State Tax Commission. The Commission will continue to consider the issue and may advise the Counties on this in another forum.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2003, is \$\$\$\$\$. In addition, the Commission overturns that portion of its Protective Order pertaining to the Real Property Transfer Survey as discussed above. It is so Ordered.

**In addition, to the extent that this order contains confidential "commercial information" pursuant to Utah Code Sec. 59-1-404, the parties are hereby ordered to refrain from disclosing such information outside this proceeding.**

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

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Jane Phan  
Administrative Law Judge

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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