

03-1503
Locally Assessed Property
Signed 01/310/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
Petitioner,)	
v.)	Appeal No.: 03-1503
)	
BOARD OF EQUALIZATION OF)	Parcel Nos.: MULTIPLE - 3
DAVIS COUNTY, STATE OF UTAH,)	Tax Type: Property Tax/Locally Assessed
)	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, Owner
PETITIONER REPRESENTATIVE, Attorney
For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy County Attorney
RESPONDENT REPRESENTATIVE 2, Appraiser, Davis County
Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 30, 2004. The Commission took original jurisdiction of this matter after the Davis County Board of Equalization (“County BOE”) failed to forward the Commission a decision concerning the Petitioner’s original appeal to that body. The Commission conducted a Mediation Conference with

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the parties on February 5, 2004, but the matter was not resolved. Although the matter was originally scheduled for hearing on April 6, 2004, the Petitioner submitted a Motion for Continuance on April 1, 2004, which the Commission granted.

On November 29, 2004, PETITIONER submitted a post-hearing document for the Commission to consider in reaching its decision. The document is an article entitled "ARTICLE," which concerns income tax deductions associated with remodeling projects. However, the Petitioner submitted the article after the Formal Hearing had concluded and without the Commission granting him permission or ordering him to do so. Furthermore, the County was not afforded an opportunity to respond to the article. For these reasons, the Commission does not receive the article into evidence in this matter and does not consider it when arriving at its decision.

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 three separate parcels as of the lien date.
4. The three parcels under appeal are all located at or near ADDRESS in CITY, Davis County, Utah.
5. For assessment purposes, the three parcels at issue are identified as Parcel No. #####-1 ("Parcel #####-1"), Parcel Number #####-1 ("Parcel #####-2") and Parcel Number #####-

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3 (“Parcel #####-3”). All three parcels are adjacent to one another or abut other parcels owned by the Petitioner.

6. Parcel #####-1 is a 0.88-acre parcel of undeveloped commercial land. For the 2003 tax year, this parcel was assessed at \$\$\$\$\$, or \$\$\$\$\$ per square foot. This parcel is not located on (X), but is a “backage” parcel that abuts other parcels owned by the Petitioner that have frontage on (X).

7. Parcel #####-2 is a 0.60-acre parcel of commercial land with a 4,941-square foot commercial building. This parcel was assessed at \$\$\$\$\$ for the 2003 tax year. The parcel has 150 feet of frontage on (X). The assessed value equates to \$\$\$\$\$ per square foot of main floor commercial building space.

8. Parcel #####-3 is a 0.23-acre parcel of undeveloped commercial land that abuts both Parcel #####-1 and Parcel #####-2. Like Parcel #####-1, this parcel has no frontage on (X). For the 2003 tax year, this parcel was assessed at \$\$\$\$\$, or \$\$\$\$\$ per square foot.

9. The Petitioner submitted a copy of two receipts issued by the Davis County Treasurer showing the amount of taxes paid for the 2000 and 2001 tax years on the parcels at issue. (Exhibit P-1).

10. The Petitioner argued that the parcels at issue possibly contain soil contamination, a factor that, in the Petitioner’s opinion, should decrease their assessed values. As evidence of contamination, the Petitioner submitted a May 24, 1993 letter addressed to the Petitioner and signed by (X) from the Environmental Health and Laboratory Division of the Davis County Health Department (Exhibit P-2). This letter referenced the illegal dumping of asphalt and other

materials on a property owned by the Petitioner. The Petitioner asserted that this letter is evidence that the subject properties may contain soil contamination. PETITIONER also stated that the city had condemned all or a portion of the parcels under appeal, but provided no evidence that condemnation had occurred.

11. PETITIONER testified that he had obtained several estimates of the cost to build a new commercial building similar in size to one existing on Parcel #####-2. He stated that those estimates ranged from \$\$\$\$\$ to \$\$\$\$\$. He also testified that the building cost approximately \$\$\$\$\$ to build in 1978 (approximately 25 years prior to the lien date).

12. Petitioner also argued that the building on Parcel #####-2 should be valued on the basis of the condition and quality of the building materials incorporated into it. Petitioner contends that the building was constructed from materials sold as “salvaged” materials. Petitioner suggests that because these materials were not in “new” condition at the time the building was constructed, the value of the building for the 2003 tax year is less than that of the comparables chosen by the Respondent in its appraisal (Exhibit R-1) for this property, assuming that the buildings associated with the appraisal’s comparable sales were built using new materials.

13. PETITIONER testified that he had attempted to sell Parcels #####-1 and #####-3 together as a unit for \$\$\$\$\$, but that he did not receive any offers of purchase. PETITIONER also stated that he did not use a real estate agent to market the properties, but that he placed a newspaper advertisement to market them. He also stated that a right-of-way impacts the value of each of these parcels and indicated that he purchased the parcels in the 1970’s at prices significantly lower than their assessed values.

14. For each property at issue, the County submitted a document in which RESPONDENT REPRESENTATIVE 2 estimated its fair market value for the 2003 tax year. For Parcel #####-2, RESPONDENT REPRESENTATIVE 2 submitted a “restricted report” of a “complete appraisal” (Exhibit R-1). In his appraisal, RESPONDENT REPRESENTATIVE 2 estimated this parcel’s fair market value to be \$\$\$\$\$ using the cost approach and \$\$\$\$\$ using the sales comparison approach. RESPONDENT REPRESENTATIVE 2 testified that he performed an income analysis to estimate the subject’s value, but did not include it in his report. RESPONDENT REPRESENTATIVE 2 also testified that, in his opinion, the presence of salvaged construction materials in the building on this parcel would have no effect on its value, unless the salvaged materials were defective.

15. Although RESPONDENT REPRESENTATIVE 2 did not prepare a signed appraisal report for either of the two undeveloped parcels at issue, he submitted a document relating to each property in which he estimated its value using a sales comparison approach. For Parcel #####-3, he estimated a value of \$\$\$\$\$, or \$\$\$\$\$ per square foot (Exhibit R-2) and, for Parcel #####-1, he estimated \$\$\$\$\$, which also equates to \$\$\$\$\$ per square foot (Exhibit R-3).

16. RESPONDENT REPRESENTATIVE 2 testified that he did not see any visible signs of contamination when he visited each of the properties at issue. However, he stated that, if the properties should be contaminated, they might have a lower value than he estimated, but that he would have to do further research to be sure if value would be affected.

17. The Petitioner argued that the Commission should reject the appraisal submitted by RESPONDENT REPRESENTATIVE 2 on Parcel #####-2 (Exhibit R-1) because the

comparable sales used incorporated into it are “better” properties than the subject, because RESPONDENT REPRESENTATIVE 2 was unaware at the time he appraised the property that the building was constructed of salvage materials and that the land could be contaminated, and because the Petitioner did not include in his appraisal an income approach to value that examined the property’s actual rents and vacancies. As to the two undeveloped parcels at issue, the Petitioner argued that RESPONDENT REPRESENTATIVE 2 did not account for the effect on value caused by the possible contamination and the right-of-way.

18. RESPONDENT REPRESENTATIVE 2 stated that evidence shows that one of the parcel at issue (Parcel #####-3) is properly assessed for the 2003 tax year, while the other parcels, Parcel #####-1 and Parcel #####-2), are underassessed (i.e., fair market value is higher than assessed value). However, he also stated that it is the County’s policy not to seek increases in assessed values challenged on appeal, in order to avoid the appearance of acting in a retaliatory manner. Therefore, the County recommended that the Commission sustain the values at which the properties were originally assessed for the 2003 tax year.

19. The Petitioner asked the Commission to include in its decision a finding that any appraisal of the property that does not account for the possible soil contamination is flawed. The Petitioner also asked the Commission to reduce the value of the parcels at issue, but conceded that it did not know how the Commission should do so. The Petitioner also stated that, to be fair, the Commission should order: 1) the Davis County Department of Health to conduct soil testing on the parcels to determine if contamination exists; 2) the parties enter into arbitration to decide who should

pay for the cost to cure the contamination, should it exist; and 3) the assessed value of the real property at issue to be reduced until such time that the contamination is cured.

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.

DISCUSSION AND CONCLUSIONS OF LAW

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For the 2003 tax year, Parcel #####-1 was assessed at \$\$\$\$\$, Parcel #####-2 at \$\$\$\$\$, and Parcel #####-3 at \$\$\$\$\$. Neither party presented evidence or testimony to show how the County arrived at these assessed values. To increase or decrease any of the assessed values at issue, the evidence provided by the parties at the hearing must call into question the assessed value and provide a sound basis for the value to which it is changed.

Soil Contamination. The Petitioner argues that the parcels under appeal may be contaminated and, if so, that the value of the parcels would be negatively impacted. As evidence, the Petitioner submitted a letter (Exhibit P-2) that PETITIONER received from the Davis County Health Department in 1993. The letter gives the Petitioner notice that he must remove items illegally dumped on his property, including asphalt, tree cuttings, construction waste, and other materials. There is no evidence to suggest that these items remained on the parcels at issue as of the lien date, which is nearly ten years not only after the date on the letter but also the date by which PETITIONER was to remove the items.

Nor does this letter prove that soil contamination exists on any of the parcels at issue. While the letter suggests that the PETITIONER may have violated an additional statute should the illegally dumped asphalt be deemed hazardous, it does not state that the asphalt was deemed hazardous and, if so, whether the soil was contaminated prior to its removal and remains so as of the lien date. In fact, the Commission would consider suspect any appraisal that concluded, from this “evidence,” that the value of any of these parcels should be adjusted to account for contamination. The Commission finds that, based on the evidence presented at the Formal Hearing, soil

contamination is not an attribute of the parcels under appeal and is not a factor that affects their fair market values for property tax purposes.

Furthermore, concerning the Petitioner's request that the Commission issue a number of orders concerning the contamination issue, the Commission does not have the authority to order a party to investigate possible land contamination or order parties to cure known contamination. In addition, if the Petitioner believes that evidence concerning the contamination of the parcels under appeal was in existence and in possession of the Respondent, it had an opportunity to conduct discovery prior to the hearing and chose not to.

Other Arguments by Petitioner. The Petitioner also provided information about the amounts he paid in the 1970's for the land at issue and to construct the building on Parcel #####-2. The Commission does not find this information relevant to the parcels' fair market values as of January 1, 2003, the lien date, because of the length of time that has passed since these sales occurred and the construction costs were incurred.

The Petitioner also argued that Parcel #####-2 has a lower value than the comparables used by RESPONDENT REPRESENTATIVE 2 in his appraisal because the subject building was not constructed with new materials in 1978. While the Commission believes that such a fact may influence value if it results in the effective age of the building being greater than its actual age, no evidence was presented to show what effect on value the "salvage" materials have as of the lien date, if any. However, RESPONDENT REPRESENTATIVE 2 was not aware of this factor and did not consider it in his appraisal of Parcel #####-2. For this reason, RESPONDENT

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REPRESENTATIVE 2's appraisal of Parcel #####-2 at \$\$\$\$\$ and \$\$\$\$\$ might not reflect the value of the parcel should all attributes of the property be considered.

The Petitioner also contends that a right-of-way on one or more of the subject parcels affects the values at issue. However, no information concerning the right-of-way was submitted at the hearing, nor was any evidence submitted that would show what effect on value such a right-of-way would have. Without such evidence, the Commission finds that the right-of-way is not a factor on the fair market of the subject parcels for property tax purposes.

PETITIONER also testified that he had marketed Parcel #####-1 and Parcel #####-3 for sale as a unit for \$\$\$\$\$, but that he received no purchase offers at this price. Because the parcels are assessed at \$\$\$\$\$ and \$\$\$\$\$, respectively, or \$\$\$\$\$ as a unit, the Petitioner asserts that the lack of a purchase offer at \$\$\$\$\$ is evidence that the parcels are overassessed. However, no evidence of PETITIONER'S marketing efforts were presented so that the Commission could confirm that the properties were offered for sale at this price and for the Commission to consider the effectiveness of the marketing attempt and how the marketing period related to the lien date. Without such information, the Commission finds the Petitioner's prior marketing attempt is not relevant to the parcels' 2003 assessed values.

Respondent's Appraisals. On Parcel #####-2, the County submitted an appraisal prepared by RESPONDENT REPRESENTATIVE 2 in which he estimated the property to have a value of approximately \$\$\$\$\$ (approximately \$\$\$\$\$ per square foot). While the Commission is concerned that the appraisal was prepared without RESPONDENT REPRESENTATIVE 2 having all relevant information about the subject property, there is no evidence in the appraisal that supports

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a value as low as the \$\$\$\$ per square foot at which Parcel #####-2 was assessed. No other commercial property in the appraisal sold for less than \$\$\$\$ per square foot. Nevertheless, the County has asked the Commission not to increase the assessed value of Parcel #####-2 for the 2003 tax year. For this reason and given that the subject commercial building has vacancy problems and was built with salvage materials and that the Respondent did not include the income approach to value that RESPONDENT REPRESENTATIVE 2 prepared in the appraisal, the Commission finds sufficient reason not to raise the assessed value.

For the two vacant parcels, Parcel #####-1 and Parcel #####-3, the County submitted appraisals in which RESPONDENT REPRESENTATIVE 2 estimated them each to have a fair market value of \$\$\$\$ per square foot. Although this value is the same as the value at which Parcel #####-3 was assessed, it is higher than the \$\$\$\$ per square foot at which Parcel #####-1 was assessed. No comparable sale submitted by the County in its appraisal sold for less than \$\$\$\$ per square foot. Accordingly, from the comparable sales provided and without evidence to suggest otherwise, the \$\$\$\$ per square foot appraisal value for each parcel does not appear unreasonable. However, the County asks the Commission not to raise the assessed value of Parcel #####-1. For this reason and given that some of the comparable land sales are much larger in size than the subject parcels and that the Country provided no evidence to support the \$\$\$\$ per square foot frontage value for (X) property that was an essential part of its appraisals, the Commission finds sufficient cause not to raise the value of either Parcel #####-1 or Parcel #####-3.

In conclusion, the Commission finds that the Petitioner did not submit any evidence that shows the assessed values of the parcels at issue to be too high. Although the Petitioner

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described several factors about the parcels that could have a negative impact on value, the Petitioner did not present evidence showing that such impact would result in values below the assessed values. Furthermore, while the County submitted evidence that would support an increase in value on Parcel #####-1 and Parcel #####-2, the Commission has sufficient concern with the County's appraisals so that it is reasonable to sustain the assessed values instead of increasing them. For these reasons, the Commission sustains the values at which the County assessed the three parcels at issue for the 2003 tax year.

DECISION AND ORDER

Based on the foregoing, the Commission orders that the original assessed value set by the Davis County Assessor on each of the three parcels at issue be sustained for purposes of the 2003 tax year.

DATED this _____ day of _____, 2005.

Kerry R. Chapman
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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

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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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