

04-0548
PROPERTY TAX
TAX YEAR: 2003
SIGNED: 11-14-2006
COMMISSIONERS: R. JOHNSON, P. DEPAULIS, M. JOHNSON
ABSENT: P. HENDRICKSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	Appeal No. 04-0548
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax
BOARD OF EQUALIZATION OF)	
SALT LAKE COUNTY,)	Tax Year: 2003
STATE OF UTAH,)	
)	Judge: Rees
Respondent.)	

Presiding:

Commissioner Palmer DePaulis and Irene Rees, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., Attorney at Law

For Respondent: RESPONDENT REP., Salt Lake County Attorney's Office

STATEMENT OF THE CASE

For 2003, the County Assessor assessed the subject property at \$\$\$\$; \$\$\$\$ for the land and \$\$\$\$ for the improvements. Petitioner disagreed with the assessment and appealed to the County Board of Equalization. The Board sustained the assessment.

This matter came before the Utah State Tax Commission for a Formal Hearing on April 6, 2006. This appeal of the 2003 assessment was heard together with the appeal of the 2004 assessment, which is assigned Appeal No. 05-0168. Based upon the evidence and testimony presented at the hearing regarding the 2003 tax year, the Tax Commission hereby makes its:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At issue in this case is the value of the property located at ADDRESS 1, The property consists of a .65 acre lot with a rambler style residence. Petitioner is appealing the 2003 assessment of subject property.

2. As of the 2003 lien date, the subject property was located within an environmentally contaminated area designated as a Superfund Site by the Environmental Protection Agency (“EPA”) and it was included on the National Priorities List in 2000. At the time the subject property was identified as a Superfund site, there was no specified time frame for clean up. Over the years, news articles indicated that the tax used to fund Superfund cleanups lapsed in 1995, and that funding for this project was uncertain. As of the 2003 lien date, clean up had not been scheduled.¹

3. In some cases involving contaminated land, including the 2002 appeal of the subject property, the Commission has set the land to \$\$\$\$\$ if the cost of cleanup outweighed the value of the land.
 - a. The Commission’s approach has been affirmed by the Court of Appeals and Supreme Court as a reasonable method of valuing the land under the circumstances presented in those cases.
 - b. Although Petitioner asserts that the County cannot ignore those decisions in assessing the subject property for 2003, those decisions do not, as a matter of law, require an assessment of \$\$\$\$\$ for the subject land in subsequent years.
 - c. The Assessor is required to consider all information that is relevant to a determination of the subject’s market value each year. Likewise, the Commission is bound to make a decision about the 2003 assessment on the basis of the facts and evidence in the record before it.

¹ Clean up had been completed prior this hearing in 2006, but after the lien date at issue.

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- d. In this case, the County argues that not only is the value of the land greater than \$\$\$\$\$, there is no need to make an stigma adjustment to the land value on account of environmental contamination.

4. In the hearing involving the subject property for the 2002 tax year, the Commission heard evidence as to the source of the contamination and as to the Department of Environmental Quality's ("DEQ") estimated \$\$\$\$\$ cost of remediation. The DEQ witness was not present in the current hearing for the 2003 tax year. Over the County's objection, the Commission takes judicial notice of the cost of remediation presented by DEQ in the prior appeal.

5. In the hearing involving the subject property for the 2002 tax year, the Commission allowed evidence as to the Petitioner's estimate of the proportion of the total cost of remediation attributable to the clean up of the subject property. As in the 2002 appeal, Petitioner presented an exhibit (Pet. Exh. 1) in the current case to show his estimate of the cost of remediation to his property. The County objected to admittance of this exhibit because Petitioner had not exchanged it with the County prior to the hearing as required. In response, Petitioner indicated that it was the same evidence that was presented in the prior hearing and, therefore, the County had the exhibit for two years prior to the hearing. A comparison of the exhibits reveals that they are not the same and that Petitioner's overall cost estimate has increased. Because the Petitioner did not notify the County of this exhibit in advance of the hearing, the exhibit is disallowed. However, both parties admit that the property was contaminated to the extent that cleanup would be required. The Commission takes judicial notice of the facts and evidence presented in the prior hearing indicating that the projected cleanup costs exceed the assessed value of Petitioner's land.

6. Petitioner reportedly purchased the subject property in 1996 for \$\$\$\$\$. At the time, neither the Petitioner nor his finance source had notice of the contamination and Petitioner obtained conventional financing. Since the Commission heard the 2002 case, Petitioner has refinanced the home twice, using conventional financing each time. The County theorizes that if there were stigma associated with the contamination, Petitioner could not secure conventional financing. Petitioner contends, that the amounts financed did not exceed the value of the improvements on the property. Therefore, in spite of the stigma associated with the

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contamination, the loans were secured by the value of the improvements. The County did not rebut this claim and this issue does not bear on our decision.

7. The County presented a 2003 appraisal based on three comparable sales.
 - a. Comparable #1 is a contaminated property next door to the subject property. After sitting vacant, this property sold after foreclosure in February of 2004 for \$\$\$\$\$. It sold again the following day for \$\$\$\$\$.
 - b. Comparable #2 is an uncontaminated property that sold in January for \$\$\$\$\$.
 - c. Comparable #3 is an uncontaminated property that sold in October 2002 for \$\$\$\$\$.
 - d. On the basis of adjustments to the three comparables, the County's appraiser estimated the value of the subject property to be \$\$\$\$\$ as of January 1, 2003.

8. Petitioner challenged the validity of the County's appraisal because it does not consider the difference, if any, in the level of contamination between the subject property and the contaminated property next door (comparable #1). The evidence indicates that both properties met at least the minimum conditions to be listed for clean up. The Petitioner failed to demonstrate that there was a substantial difference in the level of contamination between the two properties. Nor did he show that the subject property's market value suffered a stronger influence from the contamination than the adjacent property. Petitioner's overall objection to the appraisal is denied.

9. In addition to the appraisal, the County submitted the MLS sheet for a cabin property located at ADDRESS 2. The property sold in July of 2005. Respondent claims that this property was contaminated at the time of the sale, although the contamination is not disclosed in the MLS sheet.

10. In support of its claim that contaminated properties do not suffer a stigma that substantially impacts their sales prices, the County submitted its residual land value analysis.
 - a. The analysis compares estimated residual land values of two contaminated properties to estimated residual land values of six uncontaminated properties.

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According to the County's analysis, the residual values of uncontaminated land in six sales ranges from 28% to 53% of the total sales price. The residual land values of two contaminated properties were 46% and 36% of the sales price, within the range of the uncontaminated properties.

- b. As another check on the result, the analysis includes estimated residual land values of three vacant land sales dating back as far as 2001. Comparing the 2005 assessed values of these properties, as improved, to the prices they sold for as vacant land, the analysis indicates a land to building ration of 31%-34%.

11. On the basis of the sales of contaminated properties and on the strength of the residual land value analysis, the County asserts that there is no contamination stigma. Therefore, the subject property is comparable to uncontaminated properties and its value should not be discounted on account of the contamination. However, the evidence is insufficient to prove that there was no stigma associated with the contamination as of January 1, 2003.

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, any party challenging the value set by the Board of Equalization must (1) demonstrate that the Board's assessment is in error, and (2) provide the Commission with a sound evidentiary basis for adjusting the Board's value to the amount proposed. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The valuation of this property has been before the Commission in a previous case. The Petitioner appealed his 2002 valuation. In that appeal, the Commission found that the cost to cure the contamination on the property exceeded the assessed land value and ordered the land value adjusted to \$\$\$\$\$. The Commission also ruled that the home should be assessed according to its "value in use." The Commission used this same approach in a prior appeal of a different property.

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The Commission's methodology has been challenged before the Utah Court of Appeals and the Utah Supreme Court and sustained by each court.²

Against this backdrop, the Commission now considers the assessments on the subject property for tax years 2003 and 2004.³ The Petitioner takes the position that the Commission has already spoken on the matter of the land value and that the County cannot ignore the prior rulings that fix the value of contaminated land at \$\$\$\$\$.

The County acknowledges that the Court of Appeals and Supreme Court upheld the Commission's prior decisions. However, in doing so, the Courts merely determined that the Commission's decisions were supported by the facts of those cases. The Courts did not endorse the Commission's methodology as the only method for valuing contaminated land, nor did they relieve the Commission (or the Assessor) from the responsibility of finding the fair market value of the property. Therefore, Respondent argues, the decisions do not, as a matter of law, fix the land value of the subject property. The Commission agrees. For purposes of this decision, the Commission takes notice that the land was contaminated, that it met the minimum conditions to qualify as a listed Superfund Site, that the cleanup had not been scheduled during the 2003 tax year, and that the cost of cleanup exceeds the value that the County has placed on the land. However, the Commission also considers all market evidence presented by the County to determine if market trends and information suggest a different outcome for this tax year.

Respondent's appraisal

The County submitted an appraisal based on three comparable properties. One of the properties, comparable #1, is a contaminated property located next door to the subject property. Like the subject property, it was included on the Superfund priorities list. This property sold twice in February of 2004. It sold as a foreclosure for \$\$\$\$\$, and sold again the following day for

² See, *Salt Lake County Board of Equalization v. Tax Comm'n.*, 20030598-CA (Ut. Ct. App. 2005); and *Schmidt v. Utah State Tax Comm'n.*, 980 P.2d 690 (Utah 1999).

³ A separate decision has been issued for tax year 2004 under Appeal No. 05-0168.

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\$\$\$\$\$. After adjusting this sale for time, size and other features, the appraiser arrived at an adjusted value of \$\$\$\$\$.

Petitioner challenged the use of this comparable because the appraiser did not adjust for the *level* of contamination on the comparable property and because it is a post-lien date sale. Regarding the level of contamination, it is undisputed that both properties met the minimum standards for inclusion on the Superfund priority list. The burden to show that the level of contamination varied from property to property or that variances in levels impacted market value is on the Petitioner, who raised the challenge. Having offered no evidence on these issues, Petitioner's challenge fails.

Regarding the date of the sale, Petitioner's counsel asserted that Commission policy forbids the use of post-lien date sales. That is not so. While the Commission has specifically rejected post-lien date financial information pertaining to centrally assessed properties, it has not categorically rejected post-lien date sales used in appraising locally assessed properties valued by the market approach. For an income-producing centrally assessed property, the buyer uses past and current financial information to anticipate future income streams. In that case, post-lien date financial information may be prejudicial to a retrospective determination of the property's value. That issue does not generally arise in the market for residential properties where post-lien date sales may be indicative of market value market trends on the lien date. The Commission considers post-lien date sales of residential properties to be relevant to the issue of market value, and determines the weight of this evidence in light of all of the evidence presented.

Although the 2004 sale is not rejected out of hand, it is not indicative of a thriving market for contaminated properties in early 2003. To support its contention that there were willing buyers for contaminated properties, the County submitted the sale of a cabin property at ADDRESS 2⁴ According to the MLS sheet on this property, this property was not listed for sale until June of 2004 and that it sat on the market for more than a year before it sold in 2005. The MLS sheet does not mention contamination, and it is uncertain whether this property had already been cleaned up prior to the sale or, if not, whether the contamination was disclosed to the buyer.

⁴ See, Respondent's exhibit, tab 7.

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The sale of this cabin property, by its remote sale date alone, is not relevant to the Respondent's argument that there was a market for contaminated properties on January 1, 2003.

Returning to the appraisal, comparables #2 and #3 in the appraisal are uncontaminated properties. The appraiser made no adjustment to account for the stigma associated with the contamination on the subject lot – apparently on the theory that comparable #1 and the 2005 sale of a cabin property proved there was no stigma. The Respondent has not successfully defended that theory here and the appraisal is not convincing evidence of the value of the subject property as of January 1, 2003.

Respondent's Residual Land Value Analysis

The Respondent presented its residual land value analysis to show that contaminated properties suffer no stigma in the market.⁵ Using a Replacement Cost New Less Depreciation ("RCNLD") approach to value the improvements, the analyst backed the improvement value out of the sales price and attributed the balance of the sales price to the residual land value. He then compares the resulting Land to Building Ratio of contaminated and uncontaminated properties. We note that the analyst provided no detail about the properties used in this analysis so, aside from the issue of contamination, and there is no indication of the comparability of these properties to the subject.

The first stage of this analysis ADDRESS 1 two sales of contaminated properties. One is the 2004 sale of the property next door to the subject. It is worth noting that a large portion of this property is considered "residual land" by the Assessor. That is, the size of the parcel exceeds the size of a typical building lot in this are, so the excess land is valued at a different value than the rest of the land. There is no explanation as to whether this fact should have been considered in the analysis, but the Petitioner did not raise a challenge on this issue. The analysis indicates a Land to Building Ratio of 36% for this property.

⁵ Respondent's exhibit, tab 3.

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The other sale in this section of the analysis is the 2003 sale of a residential property at ADDRESS 3. This sale raises an immediate red flag: If there was a 2003 sale of a contaminated residential property, one would have expected the County to use this sale either as a comparable in its appraisal or in place of the 2005 cabin property sale. Yet the County offered no evidence of this sale beyond its mere reference in the residual land value spreadsheet. Setting that issue aside for the moment, the analyst estimates its residual land value at 46% of total value.

Next, using the same RCNLD approach to analyze six uncontaminated properties, the study indicates Land to Building Ratios for uncontaminated properties ranging from 28% to 53%. Because the residual value of the contaminated properties falls within this range, the analyst reasons that there is no stigma due to the contamination. The Commission has a concern about the wide variance in land to building ratios here. The analyst has not attempted to explain the source of the variance, which may suggest a wide margin of error or some other imprecision in this approach.

Finally, as a check on the residual land values, the analyst found three sales of vacant uncontaminated land near the subject property.⁶ The properties were unimproved at the time of sale, and the sales date back as far as 2001. All properties were improved after the sales. Using the assessed values of the properties as improved, the analyst backed out the land price and determined a residual land value of 31%-34%.

The Commission has two concerns about this portion of the analysis. First, the land sales took place as early as 2001. If the market for vacant land improved from 2001 to 2003, the appreciated land values should be taken into consideration, but the analyst made no time adjustments. Additionally, the analyst apparently relied on 2005 assessed values, presuming that the 2005 proposed assessed values accurately reflect market values of those properties. That may or may not be true.

⁶ Respondent's exhibit, tab 4.

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The most we can glean from this analysis is that land generally contributes to the total sales price of an improved property. Given the questions about the ADDRESS 2 sale, this data is not sufficient to prove that there was a market for contaminated properties in January 2003.

The Commission set the value of this land to be \$\$\$\$ for 2002 due to the cost of clean up and the stigma associated with the contamination. The County has not offered sufficient evidence to show that the market for this property improved by the 2003 lien date.

DECISION

On the basis of the foregoing discussion, the Commission finds that the County has not supported an upward adjustment to the value set by the Board. The Commission also finds that the evidence does not support the Board's decision. As of January 1, 2003, the value of the land is \$\$\$\$ and the assessed value of the improvements is sustained. The total assessed value is reduced to \$\$\$\$\$. The County Auditor is order to adjust the assessment records in compliance with this order.

DATED this _____ day of _____, 2006.

Irene Rees
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 _____, 2006.

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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