

04-0727  
Locally Assessed Property  
Signed 02/10/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 and PETITIONER 2,	)	<b>INITIAL HEARING ORDER</b>
	)	<b>&amp; PROTECTIVE ORDER</b>
Petitioners,	)	
v.	)	Appeal No.    04-0727
	)	Parcel No.    #####-1
	)	
BOARD OF EQUALIZATION	)	Tax Type:    Property Tax/Locally
OF SALT LAKE COUNTY,	)	Assessed
STATE OF UTAH,	)	
	)	Tax Year:    2003
	)	
Respondent.	)	Judge:       Robinson

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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:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER 1  
For Respondent:    RESPONDENT REPRESENTATIVE 1, Deputy Assessor, Salt Lake  
County  
RESPONDENT REPRESENTATIVE 2, Appraiser, Salt Lake  
County

STATEMENT OF THE CASE

Petitioners appealed the decision of the Salt Lake County Board of Equalization valuing their property at \$\$\$\$\$. The parties participated in an Initial Hearing on September 13, 2004, pursuant to the provisions of Utah Code Ann. §59-1-502.5.

APPLICABLE LAW

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 provided by law. (Utah Code Sec. 59-2-103 (1).)

“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. (Utah Code Sec. 59-2-102(12).)

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 Sec. 59-2-1006(1).)

(a) “Property” means property that is subject to assessment and taxation according to its value. (b) “Property” does not include intangible property as defined in this section. (Utah Code Sec. 59-2-102(25).)

“Intangible property” means: (a) property that is capable of private ownership separate from tangible property, including: (i) moneys; (ii) credits; (iii) bonds; (iv) stocks; (v) representative property; (vi) franchises; (vii) licenses; (viii) trade names; (ix) copyrights; and (x) patents; or (b) low-income housing tax credit. (Utah Code Sec. 59-2-102(17).)

“Real estate” or “real property” includes (a) the possession of, claim to, ownership of, or right to the possession of land; . . . (Utah Code Sec. 59-2-102(28).)

Petitioners’ burden under Nelson V. Bd. Of Equalization of Salt Lake County, 943 P.2d 1354 (Utah 1997) is in two parts. First, Petitioners must demonstrate that the County's

original assessment contained error. Second, Petitioners must provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner.

#### DISCUSSION

The subject property, parcel number #####-1, is a .28-acre unimproved recreational lot located at ADDRESS in Salt Lake County, Utah. The Salt Lake County Assessor originally set the value of the subject property, as of the January 1, 2003 lien date at \$\$\$\$\$. Petitioners asked the Board of Equalization to set the value at \$\$\$\$\$. The Salt Lake County Board of Equalization sustained the value of \$\$\$\$\$. On the appeal form filed with the Commission, Petitioners requested that the value be reduced to \$\$\$\$\$.

In 1997, the Commission reviewed an appeal from Petitioners regarding the subject property. The 1995 assessed value was \$\$\$\$\$. In 1996, Respondent raised the assessed value to \$\$\$\$\$. On appeal to the Commission, Petitioner PETITIONER 1 argued the water share he owned was intangible and should not be included in the valuation. The Commission found the water share was intangible property improperly included by Salt Lake County in setting the assessed value at \$\$\$\$\$. The Commission found the market value of the property as of January 1, 1996, to be \$\$\$\$\$. See Commission case 97-0544.

Petitioners own an adjoining parcel, #####-2, which is .13 acres in size. Access to it is through the subject property, which fronts a street. The Respondent originally valued the adjoining parcel at \$\$\$\$\$ for the lien date of January 1, 2002. Petitioners appealed to the Commission. Following a formal hearing, the Commission sustained that value. See Commission case 03-0632.

Petitioners argue the subject parcel, at approximately twice the size of the adjoining parcel, should be assessed at twice the value of the adjoining parcel. This was the basis of Petitioners' proposed value of \$\$\$\$\$ before the Board of Equalization. Petitioner,

PETITIONER 1, made a similar argument during the hearing. He argued this was an appropriate value for the land without a water share. He also pointed out the value for 2002 was \$\$\$\$\$. He argued it was inappropriate to raise the value to \$\$\$\$\$ for 2003.

Respondent cited other properties in proximity to the subject property. One property, #####-3, which is “kitty-corner” to the subject property, has a cabin on it. The owner lives there year-round and keeps the road plowed during the winter. Respondent did not offer evidence of this parcel’s value. Reference to it was to establish year-round access.

The property directly across the street from #####-3, #####-4, is a .25 acre parcel with a cabin. It has a water share. In 1999, it sold for \$\$\$\$\$. Respondent offered only the sale price for parcel #####-4 in 1999. It provided no breakdown of value for land, water share, and improvement, or adjustments.

Respondent also relied on four other sales. Parcel #####-5, .32 acres in size, sold in July of 1996 for \$\$\$\$\$. Parcel #####-6, a steep piece of land that is .35 acres in size, sold in October of 2001 for \$\$\$\$\$. Parcel #####-7, .69 acres in size, sold in July of 2004 for \$\$\$\$\$. Respondent said these were buildable lots. In order for a lot to be buildable, it must have a water share.

Respondent also referred to a non-buildable parcel, #####-8. It is .60 acres in size. It has a gully down the middle and is too steep to build. According to Respondent, its value is \$\$\$\$\$.

Respondent said it was aware of a water share that recently sold for \$\$\$\$\$. Because Petitioners’ have the option of using their water share with their parcel, the Respondent considers it a buildable lot. In recognition of the fact that the water share is intangible property not associated with the land, Respondent made an adjustment of \$\$\$\$\$ to arrive at its value of \$\$\$\$\$.

Petitioner failed to demonstrate that Respondent's approach is flawed. In order to build, one must have a water share associated with the land. In this case, the water share is not associated with the subject parcel. The subject parcel has no improvements. It could be argued that this is a circumstance where the total value may exceed the sum of the parts. The value of the land may not be the total value less the sales price of a water share. Nonetheless, there is no evidence that Respondent's initial assessment contains an error.

Whether Respondent's methodology is correct, Petitioner's method has no basis in light of market data. A backage parcel valued at \$\$\$\$\$, accessible only to one owning adjoining property with access to the street, cannot be used to value the subject without making an adjustment. Merely doubling the value because the size of the subject parcel is approximately twice that of the backage parcel is not an appropriate adjustment, at least without further support.

Petitioners also argued an increase from \$\$\$\$\$ to \$\$\$\$\$ is not reasonable. Petitioners did not appeal the previous year's value, \$\$\$\$\$, as unreasonable. However, Petitioners offered no specific information supporting the previous year's value. Petitioners have not provided the Commission with a sound evidentiary basis for reducing the original valuation to an amount proposed by Petitioner.

Respondent provided some sales, presumably with water shares, ranging in price from \$\$\$\$\$ to \$\$\$\$\$. Respondent noted a water share that sold for \$\$\$\$\$. Deducting the cost of a water share from the sales price leaves a residual value that corroborates the assessment. Respondent also identified a sale of an unbuildable lot for \$\$\$\$\$, which supports the assessed value of \$\$\$\$\$.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2003 is \$\$\$\$\$. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
R. Spencer Robinson  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency 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