

04-0733,34,35,36
Locally Assessed Property
Signed 01/19/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	& PROTECTIVE ORDER
Petitioner,)	
)	Appeal Nos. 04-0733, 04-0734
v.)	04-0735, 040736
)	Parcel Nos. Multiple
)	
BOARD OF EQUALIZATION)	Tax Type: Property Tax/Locally
OF SALT LAKE COUNTY,)	Assessed
STATE OF UTAH,)	Tax Year: 2003
)	
Respondent.)	Judge: Robinson

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.

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

Petitioner appealed the decision of the Salt Lake County Board of Equalization valuing the following parcels: #####-1, #####-2, #####-3, #####-4, #####-5, #####-6, #####-7, #####-8, and #####-9. The parties participated in an Initial Hearing on November 4, 2004.

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).)

Utah Code Ann. §59-2-1004 (4)(f)(i), “If the fair market value of the property that is the subject of the appeal deviates plus or minus 5% from the assessed value of comparable properties, the valuation of the appealed property shall be adjusted to reflect a value equalized with the assessed value of comparable properties.”

“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).)

Per the Utah Supreme Court, Petitioners’ burden under Utah Power & Light Co. v. Utah State Tax Commission, 590 P.2d 332(Utah 1979), is in two parts. “Where the taxpayer claims error, it has an obligation, not only to show substantial error or impropriety in the

assessment, but also to provide a sound evidentiary basis upon which the Commission could adopt a lower valuation.” The Court reaffirmed this standard in Nelson v. Board of Equalization, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The subject properties are located north of ADDRESS near the CITY, Salt Lake County, Utah. Similar properties located in the same area are centrally assessed by the State Tax Commission.

For the 2003 tax year, Salt Lake County appraised and assessed the subject properties. For the 2004 tax year, the County has indicated appraisal and assessment of the subject properties will be turned over to the State, which, in 2003, assessed similar properties located in the same area as the subject properties. Petitioner also owns those properties. The State assessed the similar properties, as they are mining claims and are centrally assessed. The Respondent believes the State has undervalued these similar properties.

The subject properties were all part of one parcel, a mining claim, during the previous year. The preceding year, the assessed value of the parcel was \$\$\$\$\$. The parcel was subdivided because a portion was annexed by the City of CITY. The land is steep and rocky. It is in an avalanche slide path. The subject parcels are not “buildable.” The State assessed the similar properties owned by Petitioner at \$\$\$\$\$ per acre.

Respondent assessed the subject properties at approximately \$\$\$\$\$ per acre. Its assessment is based on sales of canyon properties. Those cited in the Salt Lake County Board of Equalization hearing officer’s decision are as follows:

- 4/89 13.44 acres, part of a (X), no access, sold for \$\$\$\$\$ (\$\$\$\$\$ per acre)
- 9/03 45.45 acres, sold for \$\$\$\$\$ (\$\$\$\$\$ per acre)
- 1/88 123.97 acres, (X) for \$\$\$\$\$ (\$\$\$\$\$ per acre)
- 7/89 23.84 acres, part of (X) for \$\$\$\$\$ (\$\$\$\$\$ per acre)
- 3/88 68.96 acres, no mineral rights, for \$\$\$\$\$ (\$\$\$\$\$ per acre)
- 8/89 same as the (X) sale in 1988, sold for \$\$\$\$\$

4/98 1.72 acre, sold with mining claim for \$\$\$\$\$ (\$\$\$\$\$ per acre)
10/00 .30 acre, in slide area, sold as (X) for \$\$\$\$\$ (\$\$\$\$\$ per acre)
7/89 22.73 acres, part of (X), for \$\$\$\$\$ (\$\$\$\$\$ per acre)
3/99 32 acres, portions of which could not be developed, for \$\$\$\$\$ (\$\$\$\$\$ per acre)
11/93 65.19 acres, bought to expand (X) for \$\$\$\$\$ (\$\$\$\$\$ per acre)
A current listing of 28 acres for \$\$\$\$\$ (\$\$\$\$\$ per acre)

The above information is taken from the hearing record from the Board of Equalization's decision regarding the subject properties. Respondent provided limited information on some of the above noted sales at the Initial hearing. It also provided information on sales not cited by the hearing officer.

The hearing record also cited two other sales offered by Petitioner. Both were in November of 2000. One was 23.27 acres, sold for \$\$\$\$\$. The other was 318.68 acres, sold for \$\$\$\$\$. Each sold for approximately \$\$\$\$\$ per acre. The location of the parcels was not given. The hearing officer did not consider the sales valid because they involved a party that already had an interest in the resort and because they were located in another county.

The hearing officer noted that all sales cited by Respondent, save one, were more than one year old. She also noted that Petitioner's two sales were two years old. She said the Petitioner's sales did not appear to be fair market sales and that they were too old. She sustained the Respondent's value.

At the Initial Hearing, Respondent referred to a sale of 45.45 acres in September of 2003. Respondent stated it was a mining claim, similar to the fourth parcel at issue here. Respondent said it was at the top of the ridge. Respondent did not know if it was in an avalanche zone.

Respondent also referred to the January 1988 sale of 123.97 acres for \$\$\$\$\$. This parcel is one mile south of the (X). It is a ridge between (X) drainage and (X). It is halfway down the canyon. Respondent acknowledged that recent sales were difficult to come by.

The parties agree, however, that the subject parcels are comparable to adjoining state-assessed parcels. Those parcels were valued at \$\$\$\$ per acre for the year in issue, which value was apparently not appealed by the County. Comparable properties assessed by similar methodologies must be valued consistently, even though some parcels are assessed by the state and others by a county. See Amax Magnesium Corp. v. Tax Com'n, 796 P.2d 1256 (Utah 1990).

DECISION AND ORDER

The Tax Commission has the responsibility to value “all mines and mining claims except in cases, as determined by the Commission, where the mining claims are used for other than mining purposes, in which case the value of the mining claims . . . shall be assessed by the assessor of the county . . .” Utah Code Ann. § 59-2-201. There is some question whether these properties, or the adjoining properties, were properly assessed by the County or the State. Because this issue was not presented to us on this appeal, we do not rule on it. It appears, however, that the County and the Taxpayer may want to address this issue for 2004, both for these properties and the adjoining properties discussed above.

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2003 is \$\$\$\$ per acre. The Salt Lake County Auditor is hereby ordered to adjust its records in accordance with this decision. 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