

04-0780
Locally Assessed Property Tax
Signed 05/27/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	
)	
v.)	Appeal No. 04-0780
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Parcel No #####
SALT LAKE COUNTY,)	Tax Year: 2003
STATE OF UTAH,)	
)	Judge: Phan
Respondent.)	

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 order, 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:

Pam Hendrickson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Attorney at Law
 PETITIONER REPRESENTATIVE 2, Certified General Appraiser
 PETITIONER REPRESENTATIVE 3, MAI
 PETITIONER REPRESENTATIVE 4

For Respondent: RESPONDENT REPRESENTATIVE, Salt Lake County Appraiser

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 27, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the market value of the subject property as set by Respondent for property tax purposes.

2. The lien date at issue is January 1, 2003.

3. The subject property is parcel number ##### and is located at ADDRESS, CITY, Utah. The subject property is unimproved, vacant land, 1.68 acres in size. It is located directly above ROAD, but due to the slope any ingress/egress from the road onto the subject property is problematic. The property is steep mountainside with slopes near ##### degrees. The zoning is FM-10/zc. The zc designation means that a zoning condition has been placed on the parcel. The subject property is under the control of the (X), pursuant to which the property has been designated open space and not developable. In addition, although power and telephone lines are available and sewer could be extended at significant expense, there is no water available for the subject property.

4. The Salt Lake County Assessor's Office had originally valued the subject property for the lien date at issue at \$\$\$\$\$. The County Board of Equalization sustained the value.

5. Petitioner submitted an appraisal at the hearing in this matter that indicated the value of the subject property was \$\$\$\$\$. PETITIONER REPRESENTATIVE 2, Certified General Appraiser, had prepared the appraisal. He considered seven vacant land sales. All seven comparables were significantly larger in size than the subject, ranging from 17 acres to 184 acres. The comparable properties were all properties that could not be developed and were purchased for open-space, watershed or recreational purposes. Of the seven properties, four were located in CANYON. The comparables had sold for a per acre price ranging from \$\$\$\$\$ to \$\$\$\$\$ per acre.

6. PETITIONER REPRESENTATIVE 2 made appraisal adjustments for what he determined to be the differences between the comparables and the subject property. For each comparable he made an

adjustment of 10% for size. He indicated he did not find there to be a significant difference in price per acre for these types of properties whether they were 17 acres in size or 184 acres in size. He made a location adjustment of 100% for two of the sales. He also made a 25% adjustment for use on one of the comparables as it was his position there was a remote chance for development which may have affected the price. This property had sold for the highest amount per acre, at \$\$\$\$\$. PETITIONER REPRESENTATIVE 2 also made time adjustments as the comparable sales had occurred from January 1998 through September 2003.

7. It was PETITIONER REPRESENTATIVE 2's conclusion from the comparables that the value for the subject property should be \$\$\$\$\$ per acre, or \$\$\$\$\$ for the 1.68-acre parcel.

8. It was Respondent's position at the hearing that the subject property had been substantially overvalued by the original assessment. Respondent submitted an appraisal prepared by RESPONDENT REPRESENTATIVE, Registered Appraiser. It was RESPONDENT REPRESENTATIVE'S conclusion that the fair market value of the subject property as of the lien date at issue was only \$\$\$\$\$. In his appraisal RESPONDENT REPRESENTATIVE took into account development restrictions. He considered three sales all located in the same canyon as the subject property. All three sales were similar in size to the subject. He indicated that all three comparables were nonbuildable dry lots that also had access issues and steep slopes. Two of the properties sold for a per foot price of \$\$\$\$\$ and the third for a per foot price of \$\$\$\$\$. It was RESPONDENT REPRESENTATIVE'S conclusion from these sales that the value for the subject was approximately \$\$\$\$\$ per square foot.

9. PETITIONER REPRESENTATIVE 2 argued that all RESPONDENT REPRESENTATIVE'S properties had sold with at least some speculation of possible development. He indicated that he had talked to a real estate agent who dealt with the canyon properties. He states that the first property had been listed on the Multiple Listing Service ("MLS") as having development potential, although he did not provide the listing. It had been purchased by CITY for open space to preclude development.

PETITIONER REPRESENTATIVE 2 stated that the agent had told him that RESPONDENT REPRESENTATIVE'S second comparable had been purchased "sight unseen" by someone who thought they could build a cabin on the property. It turned out that the property was not developable and the purchaser was unable to build. PETITIONER REPRESENTATIVE 2 also testified that the same agent told him the County had purchased the third comparable relied on by RESPONDENT REPRESENTATIVE and some building with electrical power had been built on this property. The information concerning RESPONDENT REPRESENTATIVE'S first comparable could be verified by the MLS listing. However, this was not submitted at the hearing. The information concerning the other two comparables was based solely on hearsay.

10. In weighing the evidence in this matter the appraisals submitted differ widely on the comparables and value conclusions. Petitioner's appraisal uses large tracts of land with no possibility of development. These properties are not necessarily located in the same canyon as the subject. Respondent's appraisal uses properties much more comparable as far as size, location, and access factors and the Commission finds that these properties are better comparables for the subject. Petitioner argues that there was at least some possibility for development factors in these properties but this was supported with only hearsay information. For these reasons the Commission finds that the weight of the evidence favors Respondent's appraisal value.

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. 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

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). It is the value established by the County Board of Equalization that is presumed to be correct. In this matter it is undisputed that the County’s Board of Equalization value was erroneous and both Respondent and Petitioner have an equal burden of proof concerning the establishment of a new value.

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 \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2005.

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 _____, 2005.

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

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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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