

04-0929 & 04-0930
Locally Assessed Property
Signed 02/02/2005

BEFORE THE UTAH STATE TAX COMMISSION

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|--------------------------|---|--|
| PETITIONER, |) | INITIAL HEARING ORDER |
| |) | |
| Petitioner, |) | Appeal Nos. 04-0929 & 04-0930 |
| |) | Parcel Nos. #####-1 & |
| v. |) | #####-2 |
| |) | Tax Type: Property Tax/Locally Assessed |
| BOARD OF EQUALIZATION OF |) | |
| SALT LAKE COUNTY, |) | Tax Year: 2003 |
| 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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was argued in an Initial Hearing on December 8, 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 provide by law.

(Utah Code Ann. 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 Ann. 59-2-102(11).)

(1) 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. . . . (4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

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).

DISCUSSION

Petitioner is appealing the market value of the subject property as set by Respondent for property tax purposes. The lien date at issue in this matter is January 1, 2003. The subject properties are parcel nos. #####-1 and #####-2 located at ADDRESS, CITY, Utah. The Salt Lake County Assessor had originally set the values of the subject parcels, as of the lien date at issue, at \$\$\$\$\$ for parcel #####-1 and \$\$\$\$\$ for parcel #####-2. The County Board of Equalization sustained the values. In the Petition for Redetermination, Petitioner indicated that the combined value should be reduced to a total value of \$\$\$\$\$. Respondent’s representative

presented an appraisal at the hearing that indicated that the combined value was significantly higher than the value set by the County Board of Equalization, at \$\$\$\$\$.

The subject properties are two vacant lots. The parcel which fronts on the private lane, no. #####-1, is 1.85-acres in size. The second parcel, no. #####-2, is only .02 acres in size and does not have access separate from the front parcel.

Petitioner's representative argued that they value should be reduced based on lack of access. She indicated that the only access to the subject lots was over a private lane and that neighbors had blocked Petitioner's access to the subject lots. She indicated a lawsuit had been filed in August 2002. Petitioner had incurred significant legal expenses to get the matter resolved and it was not resolved until well after the lien date at issue. Petitioner's representative did submit a copy of the Complaint in the legal action concerning access. Petitioner's representative did not submit sales to support her requested value that were reasonably comparable. The sales she submitted were from a different county.

Respondent's representative submitted an appraisal at the hearing. She had valued the parcels together as one single residential lot. She also indicated that she had valued the property as if it had access as it was her understanding the larger, front parcel did have access from the private lane, that it was only the back, .02 acres, that did not have access and this would not significantly impact the value. It was her appraisal conclusion that the combined value for the subject lots was \$\$\$\$\$. She considered three sales of residential lots all located within a reasonable proximity to the subject. However, the lots all were smaller, around 1-acre in size and she made very large size adjustments based on the price per acre basis indicated by the lowest comparable sales. The comparables had sold for \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. However, after making adjustments for size it was her conclusion the indicated values for the subject property were \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$.

The Commission notes that after reviewing the complaint for the lawsuit concerning access in this matter, Petitioner's representation concerning access is incorrect. As

Respondent pointed out in this matter, the complaint indicates that Petitioner had access via the private lane to Lot 7 of the SUBDIVISION. From the plat map this appears to be the 1.85-acre parcel at issue in this appeal, parcel no. #####-1. The parcel where access was contested was described in the lawsuit as property also owned by Petitioner that was “additional property adjacent to and west of Lot 7.” Whether this is referring to the small .02 acre sliver of property, or whether Petitioner owns an additional parcel of property that was not included with this appeal, is really not relevant to determining the value of the front 1.85-acres, which had both legal and physical access.

Concerning the burden of proof in this matter, Respondent has the same burden of proof to raise the value above that set by the Board of Equalization in this matter as Petitioner has to lower the value. Petitioner did not provide any reasonable comparable sales or other basis to lower the value to the amount requested. In addition her argument that there is no access does not pertain to the 1.85 acres. The .02 acres may be impacted somewhat but it is at a residual value of only \$\$\$\$\$. Respondent submitted an appraisal, prepared by a licensed appraiser, which considered comparables in a reasonable proximity. The Commission would prefer comparable sale that bracketed the property, or sales that did not need such large adjustments, to the comparables in the appraisal. However, in light of the lack of probative evidence provided by Petitioner in this matter, and the fact that the lots are listed for sale at \$\$\$\$\$, the Commission will accept Respondent’s higher appraisal value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2003 is \$\$\$\$\$ for parcel no. #####-1 and \$\$\$\$\$ for parcel no. #####-2. The County Auditor is ordered to adjust its records in accordance with this decision.

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.

Jane Phan
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