

04-1507  
Locally Assessed Property Tax  
Signed 09/13/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>INITIAL HEARING ORDER</b>
	)	
Petitioner,	)	Appeal No.    04-1507
	)	Parcel No.    #####-1
v.	)	
	)	Tax Type:     Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF	)	
KANE COUNTY,	)	Tax Year:     2004
UTAH,	)	
	)	Judge:        Johnson
Respondent.	)	

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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 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:**

Palmer DePaulis, Commissioner  
Marc Johnson, Commissioner

**Appearances:**

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

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 June 28, 2005.

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.

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(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).

The presumption of correctness for the original valuation does not arise unless and until available evidence supporting the original property valuation is submitted to the Commission. *Utah Railway Company, v. Utah State Tax Commission*, P.3d 652 (Utah 2000).

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, 2004. The subject property is located at ADDRESS, Kane County, Utah. It is one of six 10-acre tracts of undeveloped land, consisting of mostly wooded, hilly terrain. All six parcels are contiguous to, and were segregated from, Parcel #####-2, a

91.62-acre tract of land that was heard at the same time. The Kane County Assessor had originally set the value of the subject property, as of the lien date, at \$\$\$\$\$, or \$\$\$\$\$ per acre. The County Board of Equalization (“BOE”) reduced the value to \$\$\$\$\$ or \$\$\$\$\$ per acre. On the appeal form, Petitioner requested that the value be further reduced to \$\$\$\$\$ an acre, which was the 2003 assessment. At the hearing the Petitioner argued that the property values had significantly increased from the prior tax year and that the increase was beyond a reasonable amount. Petitioner argued that property adjacent to ( X ) was assessed for approximately \$\$\$\$\$ an acre and had access to more services. The subject property did not have the same benefits and therefore should be valued at no more than the ( X ) property according to the Petitioner.

Respondent explained that the county had not reappraised properties in this area in the last five years. The large increase in value was due to the county’s reappraisal program that requires properties to be brought up to market value within a five year cycle. Respondent also argued that the value should be raised back to the original assessment of \$\$\$\$\$. At the hearing Respondent stated that the assessment included a homesite value of \$\$\$\$\$ for one-half acre. The Commission finds no evidence of this on any of the documents submitted for this appeal. Respondent presented a list of sales in the ( X ) area and one sale in the ( X ), which show a range of \$\$\$\$\$ to \$\$\$\$\$ per acre. All of the parcels were much further along in development and had power and utilities.

Commissioners Johnson and DePaulis arranged to tour the subject property with both the Respondent and Petitioner. The site visit revealed that the six 10-acre sites are virtually indistinguishable from the larger contiguous property.

The Commission finds that neither Petitioner nor Respondent provided persuasive arguments based on their respective comparable assessments or sales. Petitioner’s ( X ) assessments are in an area where the land is selling from \$\$\$\$\$ to roughly \$\$\$\$\$ per acre for 10 to 40-acre tracts of land, according to sales information provided by the Respondent. It appears, as the Commission found in Appeal No. 04-1501, that properties in the more remote and secluded areas are more valuable than those closer to the ( X ).

Respondent's comparables, on the other hand, are recreational properties that have utilities, water development and roads in an area that has already begun developing as a recreational community. However, Respondent's argument that the comparable sales support the original assessments as compared to the BOE adjustments is not persuasive. All that those sales do is demonstrate a range of values for land that is superior to the subject property. It does not establish any value at all for the subject property directly. Since no adjustments were made, the Commission is unable to determine whether the BOE adjusted value or the original assessment was more accurate. While those sales provide some support for the assessor's original assessment, they do not show that the original assessment is more accurate than the value set by the BOE. Respondent made no adjustments to the comparable sales for physical characteristics, conditions of sale, etc. Therefore the Commission is unable to determine or establish a more precise estimate of value than the current assessment. In summary, the comparables support a range of values that includes both the current and original assessments.

In the absence of either party finding a better value, the Commission finds that the appropriate representation of market value for the property is the value set by the Board of Equalization.

The Commission also considered whether the subject property should be valued and assessed at the same rate as the larger parcel, since the two were in identical terrain conditions and no boundaries were observable to distinguish them. However, the subject property, along with the other five identical parcels, is all under separate ownership from the larger property. Not only can the smaller parcels be sold independently from each other and the larger parcel, the market evidence provided by the Respondent indicates that smaller parcels sell for a higher unit value than do larger parcels. Therefore the Commission finds that the subject property, at ten acres is appropriately assessed at a higher value on a per-acre basis, than the larger 90-acre property.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the decision of the BOE and finds the value of the subject property as of January 1, 2004 is \$\$\$\$\$.

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.

\_\_\_\_\_  
Marc B. Johnson  
Commissioner

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