

05-0572, 05-0577, 05-0578, 05-0579
Locally Assessed Property Tax
Signed 04/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

SALT LAKE COUNTY ASSESSOR,*	)	ORDER FROM INITIAL HEARING
)	
Petitioner,	)	Appeal Nos. 05-0572, 05-0577, 05-0578
	)	05-0579
v.	)	Parcel No. #####-1, #####-2,
	)	#####-3, and
BOARD OF EQUALIZATION OF	)	#####-4
SALT LAKE COUNTY, UTAH, EX REL)	
(X ),	)	Tax Type: Property Tax/Locally
	)	Assessed
Respondent)	
	)	Tax Year: 2004
)	
	)	Judge: Rees

* The above caption corrects the caption error in previously issued documents related to this appeal.

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:

Irene Rees, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Appraiser, County Assessor's Office

For Property Owner: EX REL PARTY REPRESENTATIVE 1, Appraiser, EX REL PARTY REPRESENTATIVE 2, Attorney, with company representatives EX REL PARTY REPRESENTATIVE 3, EX REL PARTY REPRESENTATIVE 4 and EX REL PARTY REPRESENTATIVE 5.

STATEMENT OF THE CASE

This matter is before the Commission on an appeal by the County Assessor of the Board of

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Equalization's decision concerning the value of the subject properties. EX REL PARTY owns the properties, which are contiguous and which represent a single economic unit.

EX REL PARTY appealed the valuation of these properties to the Board of Equalization. After a hearing on the matter, the Board reduced the valuations of the parcels as follows:

Parcel No.		Initial Value	Reduction as determined by the Board of Equalization
#####-1	1.12 ac	\$\$\$\$\$	\$\$\$\$\$
#####-2	2.4 ac	\$\$\$\$\$	\$\$\$\$\$
#####-3	3.44 ac	\$\$\$\$\$	\$\$\$\$\$
#####-4	32.33 ac	\$\$\$\$\$	\$\$\$\$\$

On appeal in the Initial Hearing before the Commission, held February 13, 2006, PETITIONER REPRESENTATIVE appeared on behalf of the County Assessor, arguing that the Board erred in adjusting the value of this parcel. The property owner's representatives also appeared - not to reargue the case, but to rebut or refute the Assessor's arguments in favor of an adjustment.

DESCRIPTION OF THE PROPERTIES

Together the subject parcels comprise 39.29 acres of vacant land located at approximately ADDRESS 1, CITY 1, Utah. This is a mined out gravel pit that is zoned for manufacturing or commercial use. These parcels have frontage along STREET 1, which is a two-lane road in this area.

The buildable area of this land is limited by its topography and most of the property is below the street grade of STREET 1. The nearest existing water service is about 1.5 miles from the subject. Sewer and gas service runs near the property along STREET 1, but issues created by the topography would require additional development costs before utilities could be brought onto the property.

APPLICABLE LAW

Utah law allows the County Assessor to appeal the Board of Equalization's decision to the Tax Commission. Utah Code Ann. § 59-2-1006(1). However, the Assessor, as the

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petitioning party, has the burden to establish, on a sound evidentiary basis, that the market value of the subject property is other than that as determined by the Board. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). In this matter, the Commission looks to the Assessor to marshal the facts that support the requested adjustment.

DISCUSSION

The Assessor prepared an appraisal report on these properties, valuing them as a unit and as vacant land. The appraisal is based on the following sales:

Comparable #1: This 73.08 acre parcel of vacant land is located at ADDRESS 2. It is a mined out gravel pit and it has frontage on STREET 2. It sold in September 2004 for \$\$\$\$\$, or \$\$\$\$\$/sq. ft. After making adjustments for topography and size, the appraiser adjusted this sale to \$\$\$\$\$/sq. ft.

Comparing the narrative description of the adjustments in the appraisal (pp. 22-23) to the Sales Adjustment Grid (page 24), the following discrepancies are notable:

- a. The appraiser indicated market increases on the order of 3% per year from 2002 on. However, there is no time adjustment on this post-lien date sale. Even though the adjustments for the post lien date sales would be minor, the property owner pointed out that the adjustment would be appropriate.
- b. The appraiser states that comparable #1 has better exposure and accessibility than the subject, so a downward location adjustment is necessary. However, there is no location adjustment shown on the grid.
- c. In the narrative, the appraiser indicates that a 20% downward adjustment is required because the subject is impaired by high voltage lines. That adjustment does not show up on the grid.
- d. There is an unexplained -10% adjustment listed as "other" on the sales grid.

There are other issues concerning this comparable. The appraiser made no utility adjustment, stating that utilities were available to both the subject property and comparable #1. However, the

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representative for EX REL PARTY testified that the grade of the subject property prohibits hooking into existing sewer lines without installing lift stations at an additional cost. Furthermore, access to existing water service requires a right of way across property that EX REL PARTY does not own. There is no indication that comparable #1 suffers the same impairments, an adjustment may be appropriate.

Both the subject property and comparable #1 have topography or slope impairments, so the appraiser made a -15% adjustment to this comparable. The EX REL PARTY property owner testified that the seller of comparable #1 put \$\$\$\$ to level the site prior to the sale. The Assessor's appraiser reported that a recorded reclamation plan on comparable #1 puts the burden of remediation on the seller. However, EX REL PARTY estimates that it will have to bring in 350,000 yards of dirt to correct the grade of the subject property and there will be other remediation costs. EX REL PARTY objected to this adjustment, and there is no direct evidence of the cost of remediation for either property.

The subject property currently has one access point, but EX REL PARTY stated that future development will require two access points. Also, the existing access must be moved because it connects to a road with a steep uphill grade and due to its proximity to an intersection. EX REL PARTY cannot reconfigure the existing access or build a new point of access without first obtaining rights across property it does not own. The Assessor's appraiser argued that EX REL PARTY sold property that it could have used to reconfigure the access, so no adjustment is required. The Commission disagrees. The position of the access *is* an issue that impacts the market value of this property and it should be accounted for in the appraisal.

Comparable #2: This 38.79 acres of vacant land is located at ADDRESS 3. This property is a mined out gravel pit with limited frontage on STREET 2. The property sold in August of 2004 for \$\$\$\$\$, or \$\$\$\$\$/sq. ft. The appraiser adjusted the sales price to \$\$\$\$\$/sq. ft.

Although the appraiser claims that market values for these properties have increased at a rate of 3% per year since 2002, he made no time adjustment for this post-lien date sale. Even though the adjustment would be minor, EX REL PARTY argued that an adjustment would be appropriate.

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The appraisal narrative (pp. 22-23) indicates that the only adjustment to this comparable is a location adjustment for its inferior access and exposure, but the adjustment is not included in the Sales Adjustment Grid. EX REL PARTY disputes that comparable #2 has inferior access. According to EX REL PARTY, this property has superior access to STREET 3 and to (X), it is in CITY 2's master plan for development of one acre lots, and utilities are in place.

The appraiser made no topography adjustment for this property. It appears from pictures of comparable #2 that some reclamation work would be necessary to prepare the site for development. However, there is no indication whether the reclamation costs are equivalent to the reclamation costs of the subject property. In any event, unless comparable #2 is 30% unbuildable, the appraiser should have made an adjustment.

The appraiser made an unexplained 20% adjustment under "other."

Comparable #3: This 16.34 acre parcel is land that EX REL PARTY sold to CITY 1 in October 2001 for \$\$\$\$\$, or \$\$\$\$\$/sq. ft. CITY 1 developed the land, brought water and sewer service to the property, and installed the utilities to the property at a reported cost of \$\$\$\$\$. The appraiser made adjustments for time, size, location, and utilities to arrive at an adjusted sales price of \$\$\$\$\$/sq. ft.

The appraiser made a 22% utility adjustment to this comparable for its lack of utilities. This adjustment does not take into consideration the claims of EX REL PARTY that it cannot bring utilities to its property without the additional expense of lift stations for the sewer system and the expense of buying rights-of-way across properties it does not own for access to water lines. Additionally, the appraiser's method of determining that 22% is problematic. First, from the narrative on page 20 of the appraisal and from the discussion in the hearing, it appears that CITY 1 brought the road and utilities from some distance away to its property at a reported cost of \$\$\$\$\$ or, according to the appraiser, \$\$\$\$\$/ sq. ft. In the hearing, the appraiser indicated that he divided the cost of the road and utilities by the square footage of the CITY 1 property, then rounded up. If that is so, the appraiser's cost theory fails. First, the appraiser's narrative indicates that the \$\$\$\$\$ included the cost to build the road. If that is the case, the appraiser should have backed out the portion of that cost that is attributable to the

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road rather than attributing the full amount to utilities. Second, the appraiser's approach of calculating the average cost of trenching and installing the new public sewer and water mains is not dependent upon the size of the CITY 1 lot, although the cost of hooking into the public mains once they are in place may be determined on a per foot, per lot, or per hookup basis. Finally, based on the appraiser's theory that the cost of the road and utilities that CITY 1 installed was \$\$\$\$\$, it isn't clear how that translates to a 22% adjustment. For instance, \$\$\$\$\$ is not 22% of \$\$\$\$\$, which is the per-foot sales price of this comparable, and it is not clear how the appraiser arrived at that adjustment.

Because (1) there are inconsistencies between the appraisal narrative and the adjustment grid, (2) the appraisal contains mathematical errors, and (3) some adjustments do not have sufficient foundation, the Commission finds that the appraisal does not provide a basis for disturbing the Board's decision.

DECISION AND ORDER

Based on the foregoing, the Commission affirms the property values set for these properties by the Board of Equalization as January 1, 2004. The values are:

#####-1	1.12 ac	\$\$\$\$\$
#####-2	2.4 ac	\$\$\$\$\$
#####-3	3.44 ac	\$\$\$\$\$
#####-4	32.33 ac	\$\$\$\$\$

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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.

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DATED this _____ day of _____, 2006.

Irene Rees, 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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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