

05-0576
Locally Assessed Property Tax
Signed 04/24/2006

BEFORE THE UTAH STATE TAX COMMISSION

SALT LAKE COUNTY ASSESSOR,*)	ORDER FROM INITIAL HEARING
)	
Petitioner,)	Appeal No. 05-0576
)	
5.)	Parcel No. #####
)	
BOARD OF EQUALIZATION OF)	Tax Type: Property Tax/Locally
SALT LAKE COUNTY, UTAH, EX REL)	Assessed
(X),)	
)	Tax Year: 2004
Respondent)	
)	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

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This matter is before the Commission on the County Assessor's appeal from the Board of Equalization decision concerning the subject property, which is owned by EX REL PARTY. This parcel is one of many that were under appeal to the Board. The County Assessor initially valued this parcel at \$\$\$\$\$. Petitioner argued for an adjustment to \$\$\$\$\$ based on an appraisal. The Assessor's representative participated in the Board hearing to support the initial value with comparables. Ultimately, the Board found the property owner's appraisal to be the best evidence of value and the Board approved an adjustment to \$\$\$\$\$. The County Assessor disputes that decision and brought this appeal to the Commission.

At 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 PROPERTY

The subject parcel is an undeveloped 4.69 acre parcel of vacant land located at approximately ADDRESS 1 in CITY, Utah. This parcel is part of a mined-out gravel pit with reclamation issues that must be addressed prior to development, such as topography, land stabilization and access. Steep slope over much of the property limits the buildable area and visibility. The land is zoned for light manufacturing.

This parcel is one of five related parcels that are the subject of appeals brought by the County Assessor. The other four parcels form a contiguous 39.29 piece of land. The subject parcel is separated from the other parcels by a railway right of way. Consequently, it cannot be accessed from the other parcels and it has no frontage on a major thoroughfare. Additionally, a significant portion (30%-40%) of the parcel is unbuildable due to its steeply sloping topography. EX REL PARTY claims that water and soil stabilization must be addressed prior to development, but the owner does not have an estimate on the cost to cure.

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The subject parcel is adjacent to a parcel that EX REL PARTY sold to CITY in 2001. CITY put its Public Works facilities on its parcel. In developing its parcel, CITY built the access road, STREET 1, and brought water and sewer service to its property. Therefore, paved access and utilities are available to the subject property. The access street that runs in front of the subject property temporarily dead ends at the CITY 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 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 only to the Assessor to marshal the facts that support the requested adjustment.

DISCUSSION

The Assessor's appraiser prepared an appraisal based on the following comparables:

Comparable #1: This 5 ac. parcel located at ADDRESS 2 sold in July 2001 for \$\$\$\$\$, or \$\$\$\$\$/ sq. ft. The parcel has frontage on STREET 2 and has after-sale improvements for a manufacturing facility.

According to the narrative on page 19 of the appraisal report, the appraiser determined that the subject "has (X) exposure." Although sale #1 had direct exposure onto STREET 2, it has "inferior accessibility to (X) due to a narrow bridge between the property and the freeway. The appraiser determined that these conditions offset each other, requiring no adjustment to the sales.

Utilities were available to this property at the time of sale, so the appraiser made no adjustment for utility access.

The appraiser made an adjustment to this comparable for its proximity to high voltage power lines, “which real estate professionals estimate lowers the sales price by 20%.” The appraiser could not identify a source for this information, but argued that high voltage lines limit the improvements built under the lines. The property owner objected to this adjustment. Presumably, high voltage lines create special conditions for placing improvements near or in the utility easement and there may be a health stigma associated with high voltage lines in general. However, it is troubling that the appraiser assumes a general 20% reduction in property value without corroborating data or evidence. It is possible, for instance, that the placement of high voltage lines among high-end residential properties has a strong adverse impact residential property values, but the magnitude of the impact on commercial properties may be less extreme. Although the property owner’s representative did not effectively rebut this adjustment, the appraiser’s position is not well supported.

The Assessor’s appraiser noted that comparable #1 had ground stabilization problems on a portion of the land “which real estate professionals estimate lowers the sale price by 25%.” Again, the appraiser is making a significant adjustment based on some generalized opinion without direct evidence. If there is information about the cost to cure this problem, it should be taken into consideration in the appraisal, but there is no convincing evidence that a 25% upward adjustment is appropriate in this case. In fact, the EX REL PARTY representative confirmed that comparable #1 has water table issues that the buyer was not aware of at the time of purchase. The problem was discovered after construction was underway, requiring the builder to cure the problem and repour the footings for the building. EX REL PARTY suggests that if the buyer had known about the water problem on the property, it would have factored the cost to cure into the transaction, lowering the purchase price. Therefore, a downward adjustment is appropriate. Under the circumstances presented here, this adjustment suggested by the appraiser is not well supported.

Reviewing the adjustment grid for comparable #1, the appraiser made a 6% time adjustment, a -30% topography adjustment, and a 40% “other” adjustment, presumably the adjustments for high voltage lines and water issues. Considering all adjustments together, the

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appraiser adjusted the sales price of comparable #1 to \$\$\$\$\$/ sq. ft. However, the appraiser was unable to establish a solid foundation for 40% of the adjustment.

Comparable #2: This 16.34 ac. parcel is located adjacent to the subject property at ADDRESS 3. EX REL PARTY sold this property to CITY in October 2001 for \$\$\$\$\$, or \$\$\$\$\$/ sq. ft.

After purchasing this property, CITY put in the road and utility service to its property at a reported cost of \$\$\$\$\$. The development of the road and utilities undoubtedly benefits the subject property, but the Assessor's appraiser has used these costs to calculate adjustments to comparables without utilities. The appraiser's method of attributing the benefit of the road and utilities to the subject, and the adjustment to comparables is problematic. First, the appraiser apparently divided the cost of the road and utilities by the size of comparable #1 to arrive at a per sq. ft. adjustment of \$\$\$\$\$. Under that theory, the cost of putting in off-parcel improvements varies with the size of the parcel being developed. That is not true. The cost of building the road and extending the utilities to this property is not based on the size of the CITY property. It is based on the cost of bringing that infrastructure some distance from existing roads and utilities. If there is a variable cost that is dependent on the size of the CITY lot, it is the cost to bring the utilities onto the property – costs that cannot be attributed to surrounding properties.

Using this \$\$\$\$\$/sq. ft. calculation, the appraiser apparently determined that the installation of the road and utilities increased the value of the CITY property 22%, supporting a 22% utility adjustment. Under this theory, the first developer into the area shoulders the cost of placing the public infrastructure, but in doing so, it effectively increases the market values of surrounding properties in an amount that is equivalent to the cost of constructing the road and utilities, rather than in an amount that reflects each property's proportionate share of benefit. Moreover, if the total cost of \$\$\$\$\$ included the construction of the road, as indicated in the appraisal, the total cost cannot be attributed to a utility adjustment.

The appraiser made a –30% adjustment to this comparable for topography. In the

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narrative on page 12, the appraiser indicates that comparable #2 requires a 30% adjustment due to slope. In the narrative on page 18, the appraiser states that a -30% adjustment is applied to comparables with near level sites. Because comparable #2 and the subject property are both impaired by topography, perhaps no adjustment is necessary. However, the topography map indicates that the subject property has significantly less buildable space and utility than comparable #2, so that may justify the adjustment in the property owner's favor.

The Assessor's appraiser made a 20% "other" adjustment to this comparable. There is no explanation for this adjustment in the appraisal report or testimony.

The calculations in the sales adjustment grid appear to be in error. The net adjustments listed plus 6% time adjustment totals 28%, making the adjusted sales price \$\$\$\$\$, not \$\$\$\$\$. On the other hand, if the unexplained 20% "other" adjustment is disallowed for lack of explanation or foundation, the net adjustment would be 8%, changing the adjusted sales price to \$\$\$\$\$. The adjusted sales price would be even lower if the "utility" adjustment appropriately reflected the proportionate value of the off-site improvements to the subject property.

Comparable #3: This sale represents the purchase of two contiguous properties that together comprise a 3.38 ac. parcel located at ADDRESS 4. This property sold in June of 2004 for \$\$\$\$\$, or \$\$\$\$\$ / sq. ft. The appraiser adjusted the sales price to \$\$\$\$\$/ sq. ft.

Although the appraiser claims that market values for commercial properties in this area have increased at 3% per year since 2002, he made no time adjustment for this post lien date sale. The appraiser did make a 20% adjustment because the property is bordered on one side by a canal and because the parcel has an irregular shape. Given the topography impairments on the subject property, its buildable area is also quite irregular. Perhaps no adjustment is indicated.

Comparable #4: This 3.65 ac. parcel is located at ADDRESS 5. It sold in 2004 for \$\$\$\$\$, or \$\$\$\$\$/ sq. ft. Utilities were available to this property at the time of sale. The appraiser adjusted the sales price to \$\$\$\$\$ / sq. ft.

Although the appraiser claims that market values for commercial properties in this area have increased at 3% per year since 2002, he made no time adjustment for this post lien date sale. The appraiser made a -30% topography adjustment and the 20% upward adjustment for proximity to power lines. The Commission's concern with the adjustment for power lines has already been discussed.

DECISION AND ORDER

The burden here is on the Assessor's Office to persuade the Commission that the value set by the Board is in error and that the value recommended by the Assessor is supportable. In support of its position, the Assessor's Office presented an appraisal. Due to internal inconsistencies in the appraisal itself and due to adjustments that have not been supported with adequate foundation, the appraisal does not support the requested adjustment.

The best comparable is the adjacent property, which CITY purchased at \$\$\$\$ / sq. ft., well under the \$\$\$\$ / sq. ft. suggested by the Assessor. Arguably, upward adjustments for time and for the installation of road and utilities are appropriate, indicating that the subject property should be valued at more than \$\$\$\$ / sq. ft. On the other hand, the size of topography of the subject in comparison to the CITY lot yields a property with less functional utility, and that may offset the upward adjustments. In any event, the Board valued the subject property at \$\$\$\$ / sq. ft., which is within range of the best comparable sale. The Assessor failed to adequately prove that the subject is worth \$\$\$\$ / sq. ft. Therefore, the Commission has no basis for disturbing the Board's decision.

The value of the subject property as of January 1, 2004 is \$\$\$\$\$, the value set by the Board.

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.

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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 _____, 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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