

05-1145 & 05-1146
Locally Assessed Property Tax
Signed 06/12/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	ORDER FROM INITIAL HEARING
)	
Petitioner,)	Appeal Nos. 05-1145, 05-1146
)	Parcel Nos. #####-1 and
)	#####-2
v.)	
)	Tax Type: Property Tax/Locally
BOARD OF EQUALIZATION OF)	Assessed
SALT LAKE COUNTY, UTAH,)	Tax Year: 2004
)	
Respondent.)	Judge: Rees

Presiding:

Irene Rees, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Petitioner's Representative
For Respondent: RESPONDENT REPRESENTATIVE 1 and RESPONDENT
 REPRESENTATIVE 2, Salt Lake County Assessor's Office

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.

STATEMENT OF THE CASE

Together the subject parcels form a narrow 1.49 acre strip of land adjacent to the (X). Three billboards owned by Petitioner are situated on the land. It is otherwise unbuildable, due to size, configuration and setback requirements. Therefore, its highest and best use is for billboard signage.

For 2004, parcel #####-1 was assessed at \$\$\$\$ and parcel #####-2 was assessed at \$\$\$\$.

Petitioner's contract representative, COMPANY, appealed those values to the Board. COMPANY proposed adjusting the value of these properties to a "residual" value of \$\$\$\$\$. At the hearing before the

Appeal Nos. 05-1145 and 05-1146

Board, the Assessor's Office presented evidence to support a downward adjustment of the assessments. Relying on the Assessor's evidence, the Board reduced the values to \$\$\$\$\$ and \$\$\$\$\$ respectively.

COMPANY filed an appeal with the Tax Commission and the matter was set for an Initial Hearing on May 8, 2006. Although each parcel was assigned a separate appeal number, the appeals were heard together because the properties are a single economic unit.

Prior to the hearing before the Commission, COMPANY withdrew as Petitioner's representative. Petitioner sent a new representative to the hearing. Petitioner's representative was unable to contact COMPANY for information on this appeal. He had no information from the Board hearing, he was unaware that the Board had reduced the original assessments, and he was unaware that COMPANY had requested an adjustment to \$\$\$\$\$. Petitioner's representative stated that he was alarmed by the increase proposed for 2005, but was generally satisfied with the assessed values in previous years. Petitioner's representative expressed no interest in challenging the Board's decision, once he was informed of it.

Respondent's representative appeared before the Commission with new comparable sales evidence. These comparables are different from the comparables offered at the Board hearing and, according to Respondent's representative, they justify an increase in the assessment of these properties to \$\$\$\$\$ altogether, which is a higher value than originally assessed.

ISSUES

The primary issue before the Commission is the market value of the subject properties. However, Respondent also raised a procedural question as to whether the Commission must review the evidence that was presented to the Board and make a ruling as to whether the Board's decision is justified.

APPLICABLE LAW

With regard to an appeal of the assessed value, the party requesting an adjustment has the burden to establish that the market value of the subject property is other than that as determined by the Board of Equalization. Utah Admin. R. R861-1A-7(G). To prevail in a real property tax dispute, the party must demonstrate that the Board's assessment is in error, and provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. See, *Nelson V. Bd. Of*

Appeal Nos. 05-1145 and 05-1146

Equalization of Salt Lake County, 943 P.2d 1354 (Utah 1997); and *Utah Power & Light v. Tax Comm'n.*, 590 P.2d 332 (Utah 1979).

DISCUSSION

Giving weight and effect to the Board's Decision

The Petitioner's original representative, COMPANY, filed this appeal, then withdrew from representation prior to the hearing. The Petitioner was unaware of the detail of the appeal prior to this hearing and he was unaware of the COMPANY'S position or the basis for the appeal. In the hearing, Petitioner's new representative stated that the Petitioner was generally satisfied with the assessments on these properties through 2004, but that he was alarmed to see a major increase in the 2005 assessment. Until the hearing before the Commission, the representative was unaware that the Board had agreed to reduce the 2004 assessment. Had he known of the Board's decision earlier in this process, he may have urged the Petitioner to withdraw the appeal. However, by the time this matter reached a hearing before the Commission, the County had prepared a cross claim for an increase in value and it was too late for Petitioner to withdraw.

In spite of COMPANY'S filing to the contrary, Petitioner's representative stated Petitioner had no dispute with the 2004 assessment or the Board's decision. The Petitioner put on no evidence as to value, but challenged the County's sales comparable evidence. Under these circumstances, where the Petitioner had no evidence with which to challenge or support the Board's value, Respondent's representative questions whether he can prevail. Yes he can. Petitioner has no burden here because he is not arguing for an adjustment. In effect, he prevails if the Commission upholds the Board's decision.

Respondent questions whether the Commission can sustain the Board's decision, given that the evidentiary basis for the Board's decision was not introduced in the Commission's hearing. In this case, the comparable sales evidence presented to the Commission was completely different from the comparable sales evidence presented to the Board of Equalization. In essence, the Respondent asks how the Commission can sustain the Board's decision without first considering and ruling on the evidence underlying that decision.

Appeal Nos. 05-1145 and 05-1146

Unlike every other appeal that comes before the Commission, appeals of locally assessed property values have already been through an adjudicative process resulting in an independent decision concerning value. The Board of Equalization is responsible for testing the assessed value against the evidence presented to challenge that value. On appeal, the Commission does not attempt to reweigh the evidence that was before the Board and substitute its own judgment for the Board's. The Commission weighs the evidence before it, which may or may not be the same evidence presented to the Board, and tests the claims for adjustment against that evidence. If the Commission is persuaded that the evidence supports a change in the Board's value, the Commission will order an adjustment. If the Commission finds no basis in the evidence to upset the Board's decision, the Commission will affirm the Board's value.

In this case, the sale comparables presented to the Board were not reintroduced at the hearing before the Commission. There was no testimony on those sales, and they were not subject to cross examination. They carry no weight in the Commission's decision. The Commission will order an adjustment only if the County's representative's comparables either support the adjustment he seeks or some other value that is different from the value set by the Board.

Determination of the subject property's market value.

In this case, the land and the billboards situated on the land are owned by the same party. The billboards were assessed as personal property, and the County used a market approach to value the land. One of the appraisers at the hearing suggested that an income approach would be an appropriate method for valuing the land. Where the billboards, which are the income producing property here, are subject to separate assessment as personal property, and there is no land lease on the underlying property, the income approach is an inappropriate method for valuing the land. It is not necessary to answer here the broader question as to whether an income approach may be appropriate under other circumstances.

Respondent's representative approaches the Commission with a collection of comparables that he believes support an increase in the market value set by the Board. Comparable #1 is a 13,503 sq. ft. parcel at ADDRESS 1. This property sold in June 2004 for \$\$\$\$\$, or \$\$\$\$\$/sq. ft. The property is unbuildable due to its size and shape, but there is a single two-sided billboard situated on the property. This property is

Appeal Nos. 05-1145 and 05-1146

comparable to the subject, but the Respondent grades it as overall inferior to the subject due to its size and utility.

Comparable #2 is a corner 7,540 sq. ft. parcel at ADDRESS 2 in CITY. This property was purchased by the owner of the adjoining (X) in January 2005 for \$\$\$\$\$, or \$\$\$\$\$/sq. ft. Petitioner's representative pointed out that the purchaser placed its signage on the corner and used the remainder of the parcel to increase the size of the dealership lot. Therefore, he argues, it is not a comparable property. We agree. This parcel is part of an economic unit with the adjoining commercial property. Additionally, we question whether this was an arm's length sale.

Comparable #3 is a 20,038 sq. ft. developed lot with a vacant gas station or auto maintenance building. There is also a billboard on the property. This property sold in March of 2005 for \$\$\$\$\$. In spite of the fact that this is clearly a developed commercial property with improvements, Respondent's representative compares it to the unbuildable subject property because of the billboard on the property. Since the building is vacant, Respondent argues, the billboard is the only source of income from this property, so it is similar to the subject property. Petitioner challenges this sale because it lacks comparability to the subject property, which can only be used for billboards. We agree. This property bears no remote comparison to the subject property. We give this sale no weight.

Comparable #4 is an offer to sell a 15,904 sq. ft. parcel located at ADDRESS 3. In the past, this parcel was part of an economic unit with the adjacent parcel, upon which a (X) operated. The (X) was abandoned and the adjacent parcel apparently sold independently from the parcel upon which the (X's) signage is situated. It is offered for sale at \$\$\$\$\$, or \$\$\$\$\$/sq. ft. Petitioner stated that he tried to purchase this property as a billboard property, but land use regulations prohibit billboard signage on this lot. If that is so, this is not billboard property, even though the price set out in the offer is similar to the billboard property in comparable #1.

Respondent's representative presented a single sale here that is comparable to the subject property. That comparable, which sold for \$\$\$\$\$ (\$\$\$\$\$/sq. ft.), does not support the County's asserted value of

Appeal Nos. 05-1145 and 05-1146

\$\$\$\$ altogether. The next question is whether that comparable supports an adjustment from the Board's value of \$\$\$\$ altogether.

One could argue that the subject, which has three billboards, is up to three times as valuable as comparable #1, which has one billboard. However, one could also argue that the additional billboards on the subject property diminish in value, due to the density of signage or other factors. We simply have no definitive evidence on this point. Assuming that the subject is worth up to two to three times the sales price of comparable #1, its value should fall between \$\$\$\$ to \$\$\$\$ altogether. The Board's value of \$\$\$\$ altogether falls within this range.

DECISION AND ORDER

Based on the evidence and testimony presented, the Commission finds no evidence to support an adjustment to the Board's values. Therefore, the request is denied. The Board's values are sustained as follows:

Parcel #####-1	\$\$\$\$
Parcel #####-2	\$\$\$\$

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 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 _____, 2006.

Appeal Nos. 05-1145 and 05-1146

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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