

05-1595  
Property Tax/Locally Assessed  
Signed 08/06/2007

---

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER</b>
Petitioner,	
vs.	Appeal No. 05-1595
BOARD OF EQUALIZATION, RICH COUNTY, STATE OF UTAH	Parcel No. #####
Respondent.	Tax Type: Property Tax/Locally Assessed
	Tax Period: 2005
	Judge: Robinson

---

**Presiding:**

Pam Hendrickson, Commission Chair  
R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *pro se*  
For Respondent: RESPONDENT REPRESENTATIVE, Rich County Assessor

STATEMENT OF THE CASE

Petitioner appealed the decision of the Rich County Board of Equalization valuing the above noted parcel at \$\$\$\$\$. The parties participated in a Formal Hearing, pursuant to the provisions of Utah Code Ann. §59-2-501.5 on March 22, 2007. Based on the evidence and testimony presented at the hearing, the Commission makes its:

FINDINGS OF FACT

1. The tax in issue is the ad valorem property tax, locally assessed by the Rich County Assessor.

2. The tax year in question is 2005. The lien date is January 1.
3. The property in question is vacant land, Lot 46, SUBDIVISION 1, with an address of ADDRESS, CITY, Utah. The parcel number is #####.
4. The property is essentially rectangular in shape (61.09 x 96.94 x 61.54 x 115.66) and is 6,518 square feet in size, or .15 acre. It is bordered on one side by HIGHWAY, or the highway. The subject is on the lake side of the highway. It does not have direct street access to the highway.
5. Petitioner purchased the subject property in May of 2004 for \$\$\$\$\$.
6. The Rich County Board of Equalization valued the subject property at \$\$\$\$\$, as of January 1, 2005.
7. The value requested by Petitioner is the purchase price, \$\$\$\$\$.
8. In support of his requested value, Petitioner submitted information on listings of properties he felt were comparable to the subject. He pointed out two lots in the SUBDIVISION 2 subdivision. Both are .33 acres in size. Lot 37 was listed at \$\$\$\$\$. Lot 48 was listed at \$\$\$\$\$. Petitioner did not provide sale prices for these or other properties.
9. Petitioner said both were about the same distance from LAKE as the subject, but were about twice the size of the subject. Unlike the subject, they are across the highway from the lake.
10. Respondent said Petitioner's comparables were not sales. Additionally, Respondent said they were farther from the lake than the subject and, unlike the subject, were not accessible year round.

11. Petitioner also pointed out the presence of power poles and power lines on the subject property. He provided a photograph of the subject property, which shows the power poles and power lines. He said their presence limited his ability to improve the property by limiting the height of improvements that can be built on the subject. He said it would cost up to \$\$\$\$\$ to remediate this condition.
12. Respondent submitted an appraisal with three comparable sales. All are post lien date sales.
13. Respondent's comparable number one is a .55 acre lot, five miles south of the subject. It is on the lake side of the highway. It sold in May of 2006 for \$\$\$\$\$.
14. Respondent's comparable number two is a .19 acre lot, two and one-half miles south of the subject. It is on the lake side of the highway. It sold in January of 2006 for \$\$\$\$\$.
15. Respondent's comparable number three is a .45 acre lot, one mile south of the subject. It is on the lake side of the highway. It sold in March of 2006 for \$\$\$\$\$.
16. Respondent said all lots under one acre in size are permitted only one improvement. Therefore, all lots under one acre in size sell for similar amounts, other things being equal. The appraisal made no adjustment for size or time of sale. It made no adjustment for the power poles and power lines on the subject property.
17. Respondent's appraisal valued the property at \$\$\$\$\$.

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 provided by law. (Utah Code 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 Sec. 59-2-102(12).)

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. (Utah Code Sec. 59-2-1006(1).)

Per the Utah Supreme Court, Petitioners' burden under Utah Power & Light Co. v. Utah State Tax Commission, 590 P.2d 332 (Utah 1979), is in two parts. "Where the taxpayer claims error, it has an obligation, not only to show substantial error or impropriety in the assessment but also to provide a sound evidentiary basis upon which the Commission could adopt a lower valuation." The Court reaffirmed this standard in Nelson v. Board of Equalization, 943 P.2d 1354 (Utah 1997).

CONCLUSIONS OF LAW

1. 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).

2. Considering all of the evidence provided by both parties, there is substantial error in the assessment of the subject property, and a sound evidentiary basis upon which the Commission can adopt a lower value.

#### DISCUSSION

Petitioner's comparables do not establish an error in the assessment of the subject property. They are listings, not sales. They are more distant from the lake than the subject, and are not accessible year-round.

Respondent's appraisal valued the subject at \$\$\$\$\$. This was the Board of Equalization's value. However, Respondent's appraisal did not take into account the cost of removing the power poles and power lines in order to build an improvement on the subject property. This would have an effect on what a willing buyer would pay to purchase the subject. Based on the evidence, an adjustment is necessary.

Petitioner's estimate of the cost of \$\$\$\$\$ to remediate this condition is uncontradicted. Adjusting for this cost brings the appraised value down from \$\$\$\$\$ to \$\$\$\$\$.

The Commission finds that all of the evidence establishes a substantial error in the assessment, and a sound evidentiary basis upon which the Commission can adopt a lower value.

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property on January 1, 2005, to be \$\$\$\$\$. The Rich County Board of Equalization is directed to amend value of the subject to \$\$\$\$\$. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
R. Spencer Robinson  
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

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.