

05-1688
Property Tax/Locally Assessed
Signed 11/15/2007

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF IRON COUNTY, STATE OF UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 05-1688</p> <p>Parcel Nos. #####-1 #####-2</p> <p>Tax Type: Property Tax/Locally Assessed Tax Year: 2005</p> <p>Judge: Jensen</p>
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Presiding:

R. Bruce Johnson, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Iron County Assessor
 RESPONDENT REPRESENTATIVE 2, from the Iron 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 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.

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 21, 2007. On the basis of the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the assessed value of the subject property for the lien date January 1, 2005.
2. The subject property consists of two separate parcels: The first bears parcel no. #####-1, and is a 1.37-acre lot improved with a commercial building (the "Commercial Property"). The second bears parcel no.

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#####-2, and is a 1.1-acre lot improved with a partially completed cabin (the “Cabin Property”).

Findings of Fact Regarding the Commercial Property:

3. The county assessor initially valued the Commercial Property, as of the lien date, at \$\$\$\$\$, or \$\$\$\$\$ per acre. The board of equalization lowered the assessed valuation of the Commercial Property, as of the lien date, to \$\$\$\$\$, or \$\$\$\$\$ per acre. Petitioner requests that the commission lower the value of the Commercial Property to \$\$\$\$\$, or \$\$\$\$\$ per acre. The county requests that the commission raise the value back to \$\$\$\$\$ as originally assessed.

4. The Commercial Property is zoned GC1, a general commercial zoning. It has 28.33 feet of frontage¹ and it varies between approximately 530 and 580 feet deep. The back of the parcel is considerably wider than the 28.33-foot frontage. It is bounded on the west side by an irrigation ditch, on the north by STREET 1, on the east by a trailer park, and on the south by county property used for what the parties described as the (X). The parties presented conflicting evidence regarding right of way for the ditch on the west side of the Commercial Property. Petitioner testified that the property is burdened with a 15-foot right of way along the west side of the property to allow an irrigation company access to the ditch on the west. The county presented evidence that the ditch is on a separate parcel and that the 15-foot right of way is on that separate parcel.

5. The 28.33-foot frontage limits development potential for the subject parcel because it is not wide enough to allow a full-width dedicated roadway. This narrow frontage is made more problematic by a utility pole in the frontage area.

6. Although residential uses such as apartment buildings would normally be permitted in the current zoning for the Commercial Property, the narrow frontage and lack of a second access prevent residential uses.

7. The county’s appraiser presented evidence of the sales of six comparable properties with sale dates from June 2001 to December 2005. The respective per-acre selling prices of these comparable properties were \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The comparable property selling for \$\$\$\$\$ had a sale date in June 2001, approximately three and one half years before the lien date. It was a 4.38-acre parcel. The county’s appraiser testified that the county placed less weight on this comparable sale because larger parcels generally sell for less per acre than smaller parcels and property values have increased substantially since 2001. This comparable was, however, the closest geographically to the subject because it is the parcel with the (X) to the south of the subject. It had the same zoning as the subject and had a wide frontage onto the street it adjoins.

¹ One survey showed the frontage of the property at 42.72 feet, but county records show the frontage at 28.33 feet. For purposes of property valuation

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The county's comparable sale that sold for \$\$\$\$ per acre was a 1.87-acre parcel that sold in June 2004. It was on STREET 2 but had no street access because the Utah Department of Transportation had denied street access. The county presented evidence that the buyer of this parcel spent 15 months and \$\$\$\$ after the sale date to buy additional property to gain street access. The county's other four comparable sales were superior to the Commercial Property.

8. Petitioner did not present evidence of any sales of property comparable to the Commercial Property. Neither party presented comparable sales that would support the Petitioner's requested valuation of \$\$\$\$ per acre.

Findings of Fact Regarding the Cabin Parcel:

9. The county assessor initially valued the Cabin Property, as of the lien date, at \$\$. The board of equalization lowered the assessed valuation of the Cabin Property, as of the lien date, to \$. At the Formal Hearing, Petitioner requested that the commission lower the value to between \$ and \$. The county requests that the commission sustain the \$ value as determined by the board of equalization.

10. Petitioner does not object to the land value of \$ as determined by the county board of equalization. Rather, he objects to the \$ value the board of equalization placed on the partially finished cabin. Petitioner provided evidence of his costs for materials and labor to build the cabin and argued that the cabin portion of the Cabin Property cannot be valued any higher than the amount he spent building it. Although Petitioner's costs do include small charges for labor, Petitioner testified that he is a skilled builder with substantial amounts of construction tools and equipment and that he and his family members completed nearly all of the labor to build the cabin to its present state of completion. Because this labor did not cost Petitioner anything, he argues that the county should not have included it in his valuation.

11. The county submitted sales comparables and cost estimates from contractors to build cabins in the area of the Cabin Property. The cost estimates included labor costs. Both the sales comparables and the cost estimates support the value determined by the board of equalization if the commission determines that labor costs should be included as a part of the value of the Cabin Property.

APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. 59-1-210(7).

only, Petitioner accepts the county's characterization of 28.33 feet.

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2. 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).)

3. “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).)

4. To prevail, the a party requesting a value different from that determined by a county board of equalization must (1) demonstrate that the original assessment ads determined by the board of equalization contained error, and (2) provide the commission with a sound evidentiary basis for changing the original valuation to the amount proposed by party requesting the change. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

CONCLUSIONS OF LAW

1. With regard to the Commercial Property, neither party has presented evidence sufficient to show error in the value as determined by the board of equalization. Petitioner failed to present any sales comparables or any other evidence that the subject parcel would have sold for \$\$\$\$\$ as of January 1, 2005 and thus did not provide the evidence necessary to sustain his burden of proof in this regard. The county did present evidence in support of its request to increase the value of this parcel from that determined by the board of equalization. Although most of the county’s comparable properties sold for more per acre than the value determined by the board of equalization, a parcel directly adjoining the subject Commercial Property sold for somewhat less per acre than the board of equalization value for the Commercial Property. For that reason, the commission declines to raise the value of this parcel from that determined by the county board of equalization.

2. With regard to the Cabin Property, the commission finds that the value of the partially finished cabin that is part of the Cabin Property shall include the reasonable value of labor to build such a structure. Although there may not have been monetary cost associated with this labor, it is nevertheless part of the value of the property. Petitioner would realize the value of this labor if he were to sell the Cabin Property. In keeping with Utah statutes requiring that property be valued at an amount for which property would change hands between a willing buyer and a willing seller, the value of the Cabin Property must include the labor to build it. Petitioner has thus not sustained his burden of proof to show error in the value as determined by the board of equalization and the county’s appraiser has provided ample support for the board of equalization value.

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the Commercial Property of the subject property is \$\$\$\$ as of January 1, 2005. The Tax Commission finds that the market value of the Cabin Property of the subject property is \$\$\$\$ as of January 1, 2005. It is so ordered.

DATED this _____ day of _____, 2007.

Clinton Jensen
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 _____, 2007.

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.

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