

05-1723
Locally Assessed Property Tax
Signed 06/05/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 05-1723
)	Parcel Nos. #####-1, #####-2
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	
KANE COUNTY,)	Tax Year: 2005
UTAH,)	
)	Judge: DePaulis
Respondent.)	

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 order, 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:

Palmer DePaulis, Commissioner
Marc Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Kane County Assessor
 RESPONDENT REPRESENTATIVE 2, Deputy Assessor
 RESPONDENT REPRESENTATIVE 3, Deputy Assessor
 RESPONDENT REPRESENTATIVE 4, Clerk

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was argued in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on April 11, 2006. Petitioner is appealing the assessed value as established for the subject property by the Kane County Board of Equalization. The subject

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property is parcel nos. #####-1 and #####-2 and is located at between ADDRESS, CITY, Utah. The lien date at issue in this matter is January 1, 2005.

The Kane County Assessor's Office had originally set the value of parcel #####-2 at \$\$\$\$\$, as of the lien date at issue and the Kane County Board of Equalization sustained the value. For parcel #####-1 the Kane County Assessor's Office had valued the property at \$\$\$\$\$ and the Kane County Board of Equalization sustained the value.

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 provide by law. (Utah Code Ann. 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. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value. (Utah Code Ann. 59-2-102(12).)

(1) 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 Ann. Sec. 59-2-1006(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).

DISCUSSION

The subject property consist of two separate parcels which combined are 4.77 acres. There are no buildings on the property and Petitioner is currently using property to farm hay. The subject property is adjacent to his residence and situated on (X) in the South end of CITY. As the parcels combined are less than five acres these property are not assessed under the greenbelt provisions.

Petitioner's argument is that the Respondent has valued the subject property as commercial property. The County acknowledged that it had valued the property as commercial property arguing that the subject property could be rezoned as commercial based on the city's potential commercial zoning district. The city law indicates that any property within ½ block of the highway could be rezoned as commercial.

Petitioner provided evidence in this matter that the property was currently zoned for rural agriculture and could not be used for commercial purposes unless it was rezoned. A letter from the Mayor indicated that the potential commercial zoning does not affect the existing zones until the property owner goes through the proper channels to change the existing zoning and the city had granted the zoning changes.

There was no evidence in this matter that Petitioner had ever applied to have the zoning changed. Petitioner currently was using the property for agricultural purposes and planned on continuing that use. Petitioner argued that the values should be returned to the prior year values when the property had been valued as agricultural. The prior years values for parcel #####-2 had been \$\$\$\$\$ and for parcel #####-1 had been \$\$\$\$\$.

The issue before the Commission is a legal question, whether the valuation must be based on the actual current zoning, or whether it could be based on a potential zoning that

would result in a significantly higher value. Utah Code Sec. 59-2-102(12) provides that the value “shall be determined using the current zoning” but then provides the exception for those cases where there is a “reasonable probability of a change in zoning laws affecting that property in the tax year in question.”

This case presents the interesting scenario that if Petitioner had chosen to file during the tax year the proper application and go through the notice and hearing requirements to have the zoning changed, there was clearly a reasonable probability the zoning change would be granted. However, without action on Petitioner’s part by filing the application and going through the process, or possibly by the city to rezone on its own initiative, there was no probability of a change in the zoning laws during the year at issue. The Commission considers the language of the statute 59-2-102 (12). If the statute is saying that the assessor could assume, hypothetically, that someone was going to apply and go through the process for a zoning change and if they did so the reasonable probability was that the zoning change would be granted, than the interpretation would support Respondent’s contention. The alternative, and more correct reading based on the plain language of the statute, is that there must be a reasonable probability that the zoning would actually occur during the year at issue. Therefore, the subject property should be valued as rural agricultural until such time as it has been rezoned, or Petitioner, the city or future purchaser of the property has started taking steps necessary to have it rezoned so that there is a reasonable probability that it will be rezoned during the tax year.

For this reason the Petitioner has shown error on the value as set by Respondent for the subject property as the property has been valued as commercial property instead of rural agricultural. Petitioner has submitted the prior year’s value and argued that it was based on the property being rural agricultural value. This is the only evidence of value based on the correct zoning before the Commission.

DECISION AND ORDER

Based on forgoing the Tax Commission finds that the value of the subject property as of January 1, 2005, for parcel #####-2 is \$\$\$\$ and for parcel #####-1 is \$\$\$\$\$. The County Auditor is ordered to adjust its records pursuant to this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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.

DATED this ____ day of _____, 2006.

Palmer DePaulis
Commissioner

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency 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