

05-1773  
Property Tax/Locally Assessed  
Signed 05/22/2007

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
	)	<b>OF LAW, AND FINAL ORDER</b>
Petitioner,	)	
v.	)	Appeal No.    05-1773
	)	Parcel No.    #####
	)	
BOARD OF EQUALIZATION	)	Tax Type:    Property Tax /
OF TOOELE COUNTY,	)	Locally Assessed
STATE OF UTAH,	)	
	)	Tax Year:    2005
Respondent.	)	Judge:        Robinson

---

**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner  
R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER, *pro se*  
For Respondent:    RESPONDENT REPRESENTATIVE 1, Attorney for the Tooele  
                            County Assessor  
                            RESPONDENT REPRESENTATIVE 2, Contract Appraiser for  
                            Tooele County

STATEMENT OF THE CASE

This matter came before the Commission for a Formal Hearing on January 29, 2007. Petitioner is appealing the Board of Equalization decision setting the value of the subject property at \$\$\$\$\$. At the beginning of the hearing, the parties stipulated to join this appeal with the appeal for the 2006 year. The value determined as a result of this hearing will also be the value for the 2006 year, subject to an appeal by either of the parties to the courts.

The parties also addressed other preliminary matters. Petitioner objected to Respondent's appraisal being received, as it was not provided to him within ten days of the

hearing. Respondent objected to Petitioner's appraisal on the grounds the person who prepared it was not available to testify, making the appraisal hearsay. Additionally, Respondent objected to Petitioner testifying on the issue of equalization, on the grounds that Petitioner is not an expert.

Based upon the evidence and sworn testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The subject property is 3.13 acres of land at ADDRESS in CITY, Tooele County, Utah that is improved with a 5,000 square foot metal building. It is adjacent to, but not part of, the SUBDIVISION.

2. The Board of Equalization Hearing Officer valued the land at \$\$\$\$\$, and the building at \$\$\$\$\$. The total value, per the Board of Equalization, is \$\$\$\$\$. This is the value stated on the 2006 Notice of Property Valuation & Tax Change.

3. The area is zoned for light industrial use. Light industrial use is the highest and best use for the subject property.

4. The property has frontage on two sides, and a ditch on one side. It has good access. The easements, with the exception of one for a gas line, are typical for this type of property and do not affect value. The ditch and gas line easement lower the value.

5. The north end of town, where the subject property is located, has seen a significant increase in value. In the past few years, a COMPANY A and a ( X ) were constructed on the north end of town. The area has seen significant community development.

6. In December of 2006, a 1.25-acre parcel near the subject was under contract for sale at a price of \$\$\$\$\$. In May of 2002, a 3.69-acre parcel across STREET from the subject property sold for \$\$\$\$\$. Based on information regarding these two

properties, as well as information regarding four others, and after adjustments, APPRAISER 1, a licensed General Appraiser, testified the subject's land had a fair market value of \$\$\$\$\$. He did not value it as part of the SUBDIVISION.

7. APPRAISER 1 valued the improvement by reference to Marshall and Swift. He testified the value of the improvement was \$\$\$\$\$.

8. APPRAISER 1's total value for the subject property is \$231,800.

9. The COMPANY B appraisal appears to be the one offered in an earlier appeal. Some of the dates, and the conclusion of value, were changed, but the comparables are the same. The most recent sale listed in the appraisal is from 2000. Two of the comparables sold in 1998, two years before the COMPANY A sale. The third was at the time of the COMPANY A sale in 2000. Respondent relied on more recent sales data.

10. Petitioner submitted evidence regarding other properties in his Exhibit 2. The data contained therein is from Tooele County records. It shows Petitioner's land has a market value of \$\$\$\$\$ per acre. Ten of the twelve properties listed in Petitioner's Exhibit 2 are 7.06 acres, or less, in size. They vary in price from \$\$\$\$\$ per acre to \$\$\$\$\$ per acre. Of these ten properties consisting of 7.06 acres or less, only two have a lower price per acre than the subject. Eight have a price per acre that exceeds the subject's price per acre by more than 5%. Petitioner did not offer evidence establishing that the properties listed in Petitioner's Exhibit 2 are similar to the subject property.

11. The value of the subject property as of January 1, 2005 is \$\$\$\$\$.

#### 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. (Utah Code Ann. 59-2-102(11).)

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).)

In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:

(a) the issue of equalization of property values is raised; and

(b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of the comparable properties.

(Utah Code Ann. Sec. 59-2-1006(4).)

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).

In formal adjudicative proceedings:

.....

(3) A finding of fact that was contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence. (Utah Code Ann. Sec. 63-46b-10)

Utah Admin. Rule R861-1A-28(2) "The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence."

#### CONCLUSIONS OF LAW

1. Petitioner failed to demonstrate the County's original assessment contained an error. He did not provide the Commission with a sound evidentiary basis for reducing the original evaluation to \$\$\$\$\$. See *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

2. Petitioner did not establish his property deviated in value by more than 5% from the assessed value of comparable properties.

3. Respondent objected to Petitioner's appraisal on the grounds that it was hearsay. At this time the Commission does not address whether the appraisal is hearsay, or hearsay of the type that is admissible pursuant to the Utah Rules of Evidence, as the Commission may receive hearsay evidence at a Formal Hearing and may consider it in reaching its decision. See Utah Admin. Rule R861-1A-28(2) and Utah Code Sec. 63-46b-10. The Commission's findings in this matter are based on a totality of evidence presented and not solely on Petitioner's appraisal.

#### DISCUSSION

APPRAISER 1, a certified appraiser, testified the COMPANY B appraisal was a slightly modified version of an appraisal offered in an earlier case. He said he would not rely on the COMPANY B appraisal for any purpose.

Given the age of the appraisal, and the County's expert's rebuttal of the appraisal, the preponderance of the evidence is against the value set forth in Petitioner's appraisal. It is not sufficient to demonstrate an error in the Board of Equalization value, or to establish a sound evidentiary basis for reducing the Board's value.

Petitioner also sought to show the Respondent's value was flawed by providing evidence of changes in Respondent's values for other properties. His Exhibit 2 contains this information, taken from county records. It shows changes in value by dollar amount, tax amount, and percentage of change. He presented this evidence, focusing on the respective percentages of change, to show the County was not treating his property equally with others for purposes of evaluation. This appears to be an equalization argument.

Petitioner provided no foundation for concluding the properties in Petitioner's Exhibit 2 are similar to the subject property. Assuming the properties in Petitioner's Exhibit 2 are similar to the subject, and are referenced in support of an equalization argument, an argument to which the Respondent objected at the beginning of the hearing on the grounds Petitioner is not an expert, the evidence appears to require an upward adjustment, as most of the properties are valued at more than 5% above the County's value for the subject.

Respondent requested an increase in value based on APPRAISER 1's appraisal. However, Respondent did not provide APPRAISER 1's appraisal to Petitioner at least ten days prior to the hearing. Petitioner's objection to it being received as evidence is sustained.

APPRAISER 1 testified, and gave his opinion as to value. However, he testified property zoned for commercial use may be utilized in more ways than property zoned for light industrial use. APPRAISER 1 compared Petitioner's property, which is zoned for light industrial use, to properties zoned for commercial use. His testimony about

adjusting for that difference was not sufficiently clear to warrant raising the value above that set by the Board of Equalization.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2005 is \$\$\$\$\$. The Commission sustains the Board of Equalization value. Per the agreement of the parties, the value of the subject property as of January 1, 2006, is \$\$\$\$\$. It is so ordered.

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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. Sec. 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 Sec. 59-1-601 et seq. and 63-46b-13 et seq.