

06-0107
Property Tax/Locally Assessed
Signed 03/05/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	Appeal No. 06-0107
)	Parcel No. #####-1, #####-2,
)	#####-3, #####-4
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	
WAYNE COUNTY,)	Tax Year: 2005
STATE OF UTAH,)	
)	Judge: Jensen
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:

D’Arcy Dixon Pignanelli, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
For Respondent: RESPONDENT REPRESENTATIVE 1, Wayne County Assessor
 RESPONDENT REPRESENTATIVE 2, Clerk Auditor
 RESPONDENT REPRESENTATIVE 3, Wayne County Commissioner
 RESPONDENT REPRESENTATIVE 4, Wayne County Commissioner
 RESPONDENT REPRESENTATIVE 5, Wayne County Recorder
 RESPONDENT REPRESENTATIVE 6, Wayne County Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 13, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby

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makes its:

FINDINGS OF FACT

1. Petitioner is appealing the market value of the subject properties as determined by Respondent for property tax purposes.

2. The lien date at issue is January 1, 2005.

3. The subject properties are parcel numbers #####-1, #####-2, #####-3, #####-4, all of which were vacant lots as of the lien date. The subject properties are approximately one acre each and are located within the same development west of CITY 1, Utah and north of HIGHWAY.

4. The subject properties are outside the CITY 1 limits but inside the boundaries of the CITY (X) Water District (the "Water District").

5. The Wayne County Assessor initially valued the subject properties at \$\$\$\$ each as of the lien date in question.

6. The Wayne County Board of Equalization sustained the value of \$\$\$\$ for each of the lots.

7. Prior to the lien date of January 1, 2005, the Petitioner subdivided the subject properties from a larger parcel. The intended use of the subject properties was to provide lots for use as single-family residences either on a year round or seasonal basis.

8. At the time the Petitioner subdivided the subject properties, the Water District was allowing property owners to obtain building permits and to obtain water from the Water District.

9. On September 9, 2004, the Water District placed a moratorium into effect on new water connections outside the city limits of CITY 1, Utah. The Water District indicated that increasing demand and the effects of drought necessitated this measure to insure continued water supplies for existing users. Because the subject properties were within the Water District but outside the city limits of CITY 1, this prevented the issuance of a traditional building permit for a building with water availability.

10. On July 18, 2005, the Water District responded to continued drought and extended the water moratorium to new service within and without the city limits of CITY 1.

11. The Petitioner argues that the \$\$\$\$\$ value set by the Wayne County Board of Equalization is too high. The Petitioner argues that, at most, his value should be set at the amount for which he sold a neighboring lot in January 2006. This lot was in the same development, had the same issues with regard to water, was at or near the same size of the subject parcels, and sold for just under \$\$\$\$\$.

12. The Petitioner has, at times both before the lien date and afterward, listed the subject properties for sale. This has included listings on the MLS as well as a prominent sign at the site. The sign advertised a price of “from \$\$\$\$\$.” One of the MLS listings was for \$\$\$\$\$. Prices in this range are typical of the prices the Petitioner has been trying to receive for the subject properties. Other than the January 2006 sale for just under \$\$\$\$\$, the Petitioner has sold no other lots in this development from the date of the September 9, 2004 water moratorium to the date of this hearing.

13. The Respondent presented evidence of three comparable sales. The first was a .97-acre lot near CITY 2, Utah that sold in May 2006 for \$\$\$\$\$. This lot had water available. The second was a .77-acre lot in the SUBDIVISION subdivision near CITY 1, Utah that sold in May 2006 for \$\$\$\$\$. This lot had water available. The third was a .69-acre lot near CITY 1, Utah that sold in February 2006 for \$\$\$\$\$. This lot did not have water available. The Respondent argued that historically, water has not made a difference in property value and that lack of water has no bearing on the value of the subject properties.

14. The Commission finds that, for the parcels at issue, the availability of water does make a difference in value. Of the four comparative sales collectively presented in this matter, the ones with water sold for \$\$\$\$\$ and \$\$\$\$\$, while the ones without water sold for \$\$\$\$\$ and just under \$\$\$\$\$.

15. The Commission finds that the properties that sold without water better estimate the value of the subject property because the subject properties are also selling without water. Of the two parcels selling

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without water, the one selling for just under \$\$\$\$\$ is closer to the subject parcel and is in the same subdivision and thus better estimates the value of the subject parcel.

16. Neither party in this action raised an equalization argument. The only values provided for the comparable sales presented were the selling prices. Neither party discussed county assessed value for any property but the subject parcels.

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).

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.)

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. 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).)

4. (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).)

5. To prevail, the Petitioner must (1) demonstrate that the County's original assessment

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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).

6. The Supreme Court of Utah has recognized that a party seeking an adjustment to value on the basis of equalization must present evidence of more than one similar property. *Mountain Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 86, ¶17, 100 P.3d 1206, 1210. One rationale for requiring more than one comparable property for an equalization case is that “it is impossible to extract evidence of a systematic practice of undervaluations of property within a class” that only contains one other property in addition to the subject property. *Id.* This rule does not apply to an argument that a property is valued at other than market value. Utah courts recognize that “the term ‘market value’ is at best an approximation.” *Rio Algom Corp. v. San Juan County*, 681 P.2d 184, 192 (Utah 1984). Thus, in contrast to the strict rules for equalization, Utah courts “permit a necessary latitude in defining ‘market value.’” *Id.* At 191.

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. Respondent maintains that the Petitioner has not met his burden of proof because Petitioner provided evidence of only one comparable sale and that *Mountain Ranch Estates v. Utah State Tax Comm'n*, 2004 UT 86, 100 P.3d 1206 requires more than one comparable sale in all cases. The Commission finds that the rule announced in *Mountain Ranch Estates* requiring more than one comparable property is not applicable in this case because the parties are disputing market value rather than equalization.

3. The Petitioner has met the burden of proof in this matter in demonstrating error in the

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valuation set by the Board of Equalization and in providing a sound evidentiary basis for a lower value for the subject property. The comparable sale of a nearly identical lot supports a value of \$\$\$\$ for each of the subject properties.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2005, is \$\$\$\$ for each of the subject properties. The Wayne County Auditor is hereby ordered to adjust its records in accordance with this decision. 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

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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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