

06-0164  
Locally Assessed Property  
Signed 12/19/2006

BEFORE THE UTAH STATE TAX COMMISSION

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|                              |   |   |
|------------------------------|---|---|
| PETITIONER 1 & PETITIONER 2, | ) | <b>FINDINGS OF FACT, CONCLUSIONS</b>    |
|                              | ) | <b>OF LAW, AND FINAL DECISION</b>       |
| Petitioner,                  | ) |   |
| v.                           | ) | Appeal No. 06-0164                      |
| BOARD OF EQUALIZATION OF     | ) | Tax Type: Property Tax/Locally Assessed |
| KANE COUNTY,                 | ) | Parcel No: #####-1                      |
| STATE OF UTAH,               | ) | Tax Year: 2005                          |
| Respondent.                  | ) | Judge: Phan                             |

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**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.**

**Presiding:**

D’Arcy Dixon Pignanelli  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1  
For Respondent: RESPONDENT REPRESENTATIVE 1, Deputy County Assessor  
RESPONDENT REPRESENTATIVE 2, Deputy County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 4, 2006. Based upon 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. For the January 1, 2005 lien date the County Assessor had originally valued the subject property at \$\$\$\$\$. This value was allocated between land and building as follows:

|                            |            |
|----------------------------|------------|
| Residential Improvement    | \$\$\$\$\$ |
| Metal Building w/addition  | \$\$\$\$\$ |
| Residential Land (1 acre)  | \$\$\$\$\$ |
| Excess Acres (27.26 acres) | \$\$\$\$\$ |

3. The County Board of Equalization reduced the value attributed to the metal shed and attached lean-to addition to \$\$\$\$\$, but sustained the remaining value. This was a reduction in the total value of \$\$\$\$\$, which resulted in a value of \$\$\$\$\$ for the lien date at issue.

4. The subject property consists of 28.26 total acres and is improved with a rambler style residence. The residence was built in 2002 and has 2,444 square feet. Attached to the residence is an oversized two-car garage. The land near the residence is landscaped. Also on the property is the 2,460 square foot metal building that had been constructed in 1999, with a lean-to style addition of 462 square feet.

5. From the Initial Hearing the Commission reduced the value of the metal building to \$\$\$\$\$ based on equalization arguments and information provided by Petitioner regarding the County's value of two other similar metal buildings. Petitioner asked that the Commission consider the evidence regarding the metal building submitted at the Initial Hearing and the Commission's Initial Hearing Decision regarding the building.

6. Petitioner did not present an appraisal or comparable sales to support a lower market value for his property. Petitioner's argument was based on equalization. He presented the County's assessments on two parcels that he considered comparable to his own and were located near his property. Both of the parcels were properties with twenty acres or more and a residence. He pointed out that for the parcel #####-2 the County has valued the primary acre of land at \$\$\$\$\$ and the secondary land at \$\$\$\$\$. The secondary land consisted of 22.30 acres so this equated to an assessed value of \$\$\$\$\$ per acre. A second property he felt was comparable, parcel no. #####-3, had been valued by the County with the primary acre at \$\$\$\$\$ and the secondary land at

\$\$\$\$\$. The secondary land consisted of 19 acres so the assessed value equated to \$\$\$\$ per acre. Petitioner's primary acre had been valued at \$\$\$\$ and his secondary land at \$\$\$\$ or \$\$\$\$ per acre.

7. Petitioner also argued that there had been a history of Respondent overvaluing his property requiring him to have to appeal the valuation annually. Respondent also presented a history from 1999 through 2005 regarding the assessment, reappraisal or factoring of the property. Respondent points out that although the values had increased almost every year, for most of the years the increase was based on the construction of new improvements or adding additional acreage. For example, in 2003 Petitioner combined some additional acreage to the subject parcel, so the acreage increased from 22.30 to 28.26 acres. The County history indicates that the only reappraisal or increases that were not due to adding land or improvements to the property had been in 1999 and 1995.

8. The 1999 value was based on a reappraisal. At that time there were no improvements on the property so the appraisal was for the land only.

9. In 2005 the County had raised the value of both land and improvements based on a Factoring Order for Region #####, District #####. The Factoring Order was imposed by the State Tax Commission after studying sales and property assessment information. The Factoring Order required the County to raise the land value by 75% in the neighborhood of the subject property.

10. Petitioner did point out that for tax year 2001 he had appealed the value of his metal building to the State Tax Commission who reduced, by order dated April 16, 2002, the metal shop value to \$\$\$\$\$. Petitioner points out that for the very next year the Assessor had valued the building the same as the original value for 2001. Once Petitioner brought this to Respondent's attention, Respondent did lower the value to \$\$\$\$\$ for tax year 2002.

11. Petitioner had not argued at the hearing that the actual market value of his property was lower

than the values indicated by Respondent, just that his property was valued too high in comparison to how the County had valued other properties. However, Respondent's focus at the hearing for the residence and land was the fair market value. The metal building was the exception. Respondent did submit equalization comparables for the metal building. Regarding the land and residence, Respondent submitted market value evidence, which indicated that the market value was at least as high as the value established by Respondent. Respondent's evidence included numerous land sale comparables as well as large acreage properties improved with a residence.

12. One of the most compelling market comparables was a property adjacent to the subject, parcel #####-4. This property had sold for \$\$\$\$\$ in August 2003. The County did not make appraisal adjustments, but this sale would support a higher value for the subject as the subject property appeared superior in a number of ways. The subject has 28.26 total acres and the comparable had only 12.80 acres. The subject residence was both newer and larger and the comparable had some obsolescence issues with an addition. Although this was offered as a market comparable, upon the Commission's request, the Respondent did present the assessed value for the land, which was actually higher on a percentage basis than the subject property. The primary acre rate was the same for both the subject and this comparable.

13. Respondent's other residential comparable sale for the property was a residential property that was farther away up the canyon and it is unclear whether the location was superior or not to the subject location. This second property, parcel no. #####-5, had sold twice. It had sold for \$\$\$\$\$ in 2001 and \$\$\$\$\$ in 2004. This paired sale indicates an increase in market value from 2001 to 2004. The subject residence was larger than this comparable, the subject land was larger than this comparable and the subject had the large metal building that the comparable did not have.

14. Clearly from the evidence presented the total market value of the subject property is at least

the value of \$\$\$\$\$. In fact the evidence indicates the County was conservative in its valuation based on the sales.

15. Regarding Petitioner's land equalization argument, Petitioner provided the assessed values of two similar properties that were not very far in distance from the subject. The County had lower land values for these properties in comparison to the subject. The County indicates that they are in a different valuation neighborhood. Petitioner provides no photographs or detailed information about these properties, other than the land size and his testimony that they were in a similar location and would be comparable. However, there are numerous other parcels, some nearer in location to the subject that could have been used in the equalization analysis. For example the property adjacent to Petitioner had been valued by the County at a higher per-acre rate for the secondary land. The primary acre for this adjacent property was the same rate as the subject property. This adjacent property is in a similar area and would be both a good market sale comparable and equalization comparable for the subject property.

16. At the Formal Hearing, Respondent presented equalization comparables for the metal building that included the size, year built and the County's assessed value. Respondent pointed out that it valued seven metal buildings near the subject ranging from \$\$\$\$\$ per square foot to \$\$\$\$\$<sup>1</sup> per square foot. While the County Board of Equalization's value was \$\$\$\$\$ per square foot, the two other buildings constructed during the same year as the subject metal building, 1999, were valued at over \$\$\$\$\$ per square foot. The two metal buildings that were two years older than the subject, built in 1997, were the next closest in age and were around \$\$\$\$\$ per square foot. It was these two 1997 buildings that Petitioner had presented at the Initial Hearing and upon which the Commission relied in making its adjustment. Petitioner argued that these buildings had superior features like finished rooms, heat or built up foundation, but considering the consistency

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<sup>1</sup> This information was included on Exhibit D, Submitted by Respondent. The Commission calculated its value per

of the County's valuations based on year built for these buildings and that the subject is valued lower than the other buildings of the same age, the Board of Equalization's value for the subject building was not unequal.

APPLICABLE LAW

1. 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. "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).)

3. (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. . . (4) 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

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square foot based on the value indicated and the square foot of the building stated. The County's Price/Sq.Ft.

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 comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

#### 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. In this matter Petitioner did not provide evidence of the fair market value of the subject property. Instead Petitioner argued equalization, that the County's valuation for the property was not equal with the County's valuation for comparable properties. Considering the land value, Petitioner is able to point to two properties that are valued lower by the County for tax purposes. However, he did not provide the most adjacent properties and the information from the County is that the land on the adjacent property is valued higher. The information regarding the metal building indicates they are valued based on square foot and age. Petitioner's value is not unequal. The burden to prove that the value is unequal is difficult and is not met when a party is able to point to one or two properties that are valued lower when there are a number of other relevant and comparable properties that have an equal or higher value.<sup>2</sup>

3. It is clear from the information Petitioner presented and Petitioner's arguments in this matter that he felt that his property was being singled out and that it had received more increases at a higher percentage than other properties in the County. However, the valuation history indicates that land value had

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calculation was apparently made based on pre-factor order values.

<sup>2</sup> See *Mountain Ranch Estates v. Utah State Tax Commission*, 100 P.3d 1206 (Utah 2004). In that case (at 1211) the court held, "To win an adjustment in valuation under section 59-2-106(4) without joining a battle over fair market value, a property owner must meet the clear statutory mandate of presenting multiple disparate comparable properties. The owner cannot have both an

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not actually been increased from 1999 until the 2005-year. The improvement values did increase almost every year but were due primarily to the completion or addition of improvements on the County record. The law requires that the County's valuation be based on the market value on the lien date. See Utah Code Sec. 59-2-103. To comply the County should be increasing the values as market values increase annually. If the County is not adjusting all values annually based on sales and instead making valuation changes mainly as buildings and improvements are being completed, it is going to raise questions regarding equalization as well as a perception of unfairness. In this case there may be frustration on the part of the Petitioner with the process, but there is insufficient evidence to support an equalization claim under Utah Code Sec. 59-2-1006(4).

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 \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Jane Phan  
Administrative Law Judge

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absence of comparable properties and freedom from the constraints of the fair market value standard of valuation.



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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. 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.

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