

06-0940 & 06-0941  
Property Tax/Locally Assessed  
Signed 03/20/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>INITIAL HEARING ORDER</b>
	)	
Petitioner,	)	Appeal Nos.    06-0940 & 06-0941
	)	Parcel Nos.    #####-1 & #####-2
v.	)	
	)	Tax Type:      Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF	)	Commercial
SALT LAKE COUNTY,	)	Tax Year:      2005
UTAH,	)	
	)	Judge:        Phan
Respondent.	)	

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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:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER REPRESENTATIVE 1, Attorney at Law  
                    PETITIONER REPRESENTATIVE 2  
                    PETITIONER REPRESENTATIVE 3, MAI  
For Respondent:    RESPONDENT REPRESENTATIVE 1, Appeals Manager, Salt  
                    Lake County  
                    RESPONDENT REPRESENTATIVE 2, Certified General  
                    Appraiser

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 January 3, 2007. Petitioner is appealing the assessed value as

established for the subject property by Salt Lake County Board of Equalization. The lien date at issue is January 1, 2005.

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(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. . . . (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 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).)

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 consists of two adjacent parcels of vacant commercial land, parcel nos. #####-1 and #####-2. The subject property is located at approximately ADDRESS, CITY, Utah. The Salt Lake County Assessor's Office had originally set the value, as of the lien date, for parcel #####-1 at \$\$\$\$\$. The Salt Lake County Board of Equalization reduced the value of the parcel to \$\$\$\$\$. For parcel #####-2 the County Assessor had set the value at \$\$\$\$\$ and the County Board of Equalization reduced the value to \$\$\$\$\$. The combined value for both parcels as set by the County Board of Equalization was \$\$\$\$\$.

The subject property consists of a total of 4.43 acres. When considered separately each parcel is highly irregular in shape. On a combined basis they would be still be somewhat irregular. The subject property is located just off STREET, which is a public road. However, the subject parcels do not have direct frontage on that road or any other public road. A strip of land separates the subject property from the road. COMPANY A owns the forty-foot wide strip of land in fee simple for utility lines. In order to access the property from STREET, a lease or other type of arrangement would need to be made with COMPANY A. Respondent argued about the width of the strip at the hearing. The Commission notes that the plat map presented by Petitioner with the appraisal indicates COMPANY A's strip is forty-feet wide. However, it may be that some portion of it is now under the roadway. Another factor noted was that COMPANY A did not landscape the strip, so it would detract from the subject property even if development on the subject property were to occur.

There is a right-of -way onto parcel #####-2 through the parking lot of an adjacent parcel that stems from a Joint and Reciprocal Easement. The subject lots are part of a six lot commercial subdivision. When the subdivision had originally been platted this easement was put in place so that the commercial developments could share parking. At that point the development planned for the lots had been a hotel, restaurant, theater and office structures that

could benefit from shared parking, as some would need more parking in the evening and some during the day. The original plan for these lots did not materialize. Petitioner indicates it has been in contact with the city about developing the subject lots. It is Petitioner's representation that the city will not allow development of the parcels with the only access being through the adjacent parking lot. It is their position that the city will require Petitioner to reach an agreement with COMPANY A to access the property over the strip before allowing development.

Petitioner had recently acquired the subject property in a non-arms length transaction as part of a settlement on a loan made by Petitioner that had been in default. The value attributed to the property was \$\$\$\$\$ or \$\$\$\$\$ per square foot. However, at the time Petitioner received title to the property, Petitioner thought the property fronted directly on the road. In fact, the title policy indicated that the property had road frontage and Petitioner has now filed a claim against the title insurance. As of the hearing Petitioner had not yet reached a settlement with the title insurance provider. Petitioner's representative also indicated Petitioner would never have purchased this property if it had been listed for sale in a true arms-length transaction.

Petitioner requested that the value be lowered to a total combined value of \$\$\$\$\$. This was the value conclusion reached in an appraisal submitted by PETITIONER REPRESENTATIVE 3, MAI. PETITIONER REPRESENTATIVE 3 considered seven land sales, including Petitioner's purchase of the subject property. He did note that the purchase of the subject had been on the basis that there was road frontage and access, which later was determined to be in error. All of his sales had occurred prior to the lien date.

PETITIONER REPRESENTATIVE 3 took the access issues and lack of frontage into consideration when preparing the appraisal. In his appraisal he indicated that both these items required a separate adjustment. He indicated that COMPANY A strip of land was 40 feet wide. Even if the access issue was resolved the signs and building would be set back behind this

strip. The strip was not landscaped and there would not be the visibility for a sign and building as there would be if the frontage was right on the road. To his sales comparables he made a 15% adjustment for the access, and an additional 15% adjustment for the lack of frontage. Then he made another 10% adjustment for economic conditions indicating this was needed, "Because of the situation and lack of frontage" would limit the number of buyers interested in the property.

Respondent requested the value for the subject be increased to \$\$\$\$\$, which is above that set by the County Board of Equalization. The requested value was based on an appraisal submitted by RESPONDENT REPRESENTATIVE 2, Certified General Appraiser. RESPONDENT REPRESENTATIVE 2 considered four sales, one of which was Petitioner's acquisition of the subject property, which he had considered to be a valid, arms length transaction. Two of the other sales had occurred after the lien date; one was more than eleven months and the other more than fifteen months after the lien date. Respondent also points out that there is a sign on the subject property indicating it is for sale for \$\$\$\$\$ per square foot. Respondent's valuation was at \$\$\$\$\$ per square foot.

RESPONDENT REPRESENTATIVE 2 appraised the subject property as if it currently had adequate access for commercial development. He argued that the shared access through the neighboring parking lot was sufficient. He pointed out in the appraisal that the joint reciprocal and non-exclusive easement evidenced in the deed provided for "cross access for all from all lots within the subdivision." He made no adjustment for access issues or for the non-developable condition of the property due to lack of access. Additionally he made no adjustment for the lack of frontage issue. He argued that the strip owned by COMPANY A was not actually 40 feet wide. Some of the strip may now be under the road, but RESPONDENT REPRESENTATIVE 2 did not present definitive evidence regarding the remaining width of the strip.

Concerning the fact that the subject property has been offered for sale for substantially more than the value Petitioner is now requesting, Petitioner's representative indicates Petitioner has had the sign up for more than two years and there have been no offers.

Upon reviewing the information and evidence in this matter, the weight of the evidence indicates that this property is not developable until it has access to STREET. The lack of frontage is also an additional problem. Respondent's appraisal does not give these issues adequate consideration. The Commission finds that some adjustment is appropriate. Petitioner has submitted an appraisal that did consider these factors and made adjustments totaling 40%. The Commission does have concerns that the adjustment for economic characteristics is really duplicative of the frontage and access adjustments, which may also be duplicative of each other. However, in the absence of reasonable or better supported appraisal adjustments from Respondent for the lack of access and frontage, the Commission accepts the appraisal value, rather than make some adjustment to the value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2005, for parcel no. #####-1 is \$\$\$\$ and for parcel no. #####-2 is \$\$\$\$\$. The County Auditor is hereby ordered to adjust its records in accordance with this decision.

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 \_\_\_\_\_, 2007.

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Jane Phan  
Administrative Law Judge

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 \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner