

06-1440
Property Tax/Locally Assessed
Signed 08/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	06-1440
v.)		
	)	Parcel No.	#####
BOARD OF EQUALIZATION	)	Tax Type:	Property Tax/Locally Assessed
OF MILLARD COUNTY,	)	Tax Year:	2006
STATE OF UTAH,)		
	)	Judge:	Johnson
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 notice, 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:

Marc B. Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1 (by telephone)
 PETITIONER REPRESENTATIVE 2 (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE 1, Millard County Commissioner
 RESPONDENT REPRESENTATIVE 2, from the Millard County Auditor's
 Office
 RESPONDENT REPRESENTATIVE 3, from the Millard County Assessor's
 Office
 RESPONDENT REPRESENTATIVE 4, from the Millard County Assessor's
 Office
 RESPONDENT REPRESENTATIVE 5, from the Millard County Assessor's
 Office

STATEMENT OF THE CASE

Appeal No. 06-1440

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on April 5, 2007. This matter was heard at the same time as Appeal Nos. 06-1441 and 06-1442, as the appeals concern three contiguous parcels owned by three brothers.

At issue is the fair market value of the subject property as of January 1, 2006. The subject property in this matter is a 2.04-acre vacant lot located in CITY, Utah. The subject property had no access to a road or to utilities as of the lien date. For the 2006 tax year, Millard County assessed the subject property at, \$\$\$\$\$, with the Millard County Board of Equalization (“BOE”) increased to \$\$\$\$\$.

The Petitioner requests that the Commission reduce the subject’s value to \$\$\$\$\$, based on the opinion of (X), a local real estate broker, who estimates the three lots owned by the brothers to be worth between \$\$\$\$\$ and \$\$\$\$\$. (X) based his opinion on a May 2006 sale of a 1.80-acre vacant lot near the subject, which sold for \$\$\$\$\$. Because the 1.80-acre lot that sold had access to a road and utilities and the 2.04-acre subject does not, (X) estimated that the subject’s value would be significantly less than the \$\$\$\$\$ price at which the comparable sold. PETITIONER REPRESENTATIVE 1, one of the brothers, having walked the area, noted that easements are in place for the parcels, but that utilities are not available directly on the property. He argued that additional money would be required to bring in utilities. He noted further that no road was adjacent to any of the parcels.

The County proffers evidence to show that lots between 1.50 and 2.01 acres in nearby subdivisions sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$. These lots are all smaller than the subject lot. Although these subdivision comparables all had water access, and in some cases all utilities, the County believes that the subject is worth more because it is larger in size and because it would be worth close to \$\$\$\$\$ if it had utilities as of the lien date. RESPONDENT REPRESENTATIVE 3 testified that the subject property

is in a prime location for development. For these reasons, the County asks the Commission to sustain the \$\$\$\$ value established by the County BOE.

APPLICABLE LAW

Fair Market Value. Utah Code Ann. §59-2-103(1) provides that “[a]ll 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.”

For property tax purposes, “fair market value” is defined in UCA §59-2-102(12) to mean “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.”

Appeal of County BOE Decision. UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property . . . may appeal that decision to the commission. . . .

. . . .

(3) In reviewing the county board's decision, the Commission may:
(a) admit additional evidence;
(b) issue orders that it considers to be just and proper; and
(c) make any correction or change in the assessment or order of the county board of equalization.

. . . .

Burden of Proof. For the Commission to change a value established by a county board, the party requesting the change must: 1) demonstrate that the County's assessment contained error; and 2) provide the Commission with a sound evidentiary basis for changing the County's assessment to the amount that the party proposes. *See Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

Both parties submitted comparable sales information. Petitioner provided one sale that was 0.24 acres smaller than the subject property, had better utilities, and sold for \$\$\$\$\$. This sale was provided by a broker who stated in writing that he would list the subject property for \$\$\$\$\$ to \$\$\$\$\$. The assessor, RESPONDENT REPRESENTATIVE 3, testified of several purchases in the area; three lots were in a subdivision immediately to the west of the subject property, and 2 parcels that were purchased in a single transaction. The subdivision sales ranged from \$\$\$\$\$ to \$\$\$\$\$ per acre, and had utilities and road access. The other 2 parcels sold for \$\$\$\$\$ per acre, with water and road but no other utilities. The subject property, with no utilities or road access, assessed at \$\$\$\$\$ per acre, based on a 0.40-acre lot value of \$\$\$\$\$ and backage at approximately \$\$\$\$\$ pre acre. The assessor testified that the backage rate in this area was \$\$\$\$\$ per acre. The comparable sale provided by the Petitioner, obtained from a broker, sold for more than \$\$\$\$\$ per acre.

After a discussion between the parties, PETITIONER REPRESENTATIVE 1 expressed his concern about the cost to bring in utilities. He indicated another concern was the sudden and rapid increase in the assessment. RESPONDENT REPRESENTATIVE 3 stated that with utilities the property would be worth more than \$\$\$\$\$, and that price boom was due to retirees wanting to move back to the area.

The most comparable sales are the three properties in the subdivision immediately to the west of the subject. The largest lot, 2 acres sold for the lowest price, \$\$\$\$\$, and the lowest unit price, \$\$\$\$\$ per acre. The other two, both around 1.8 acres sold for slightly over \$\$\$\$\$ per acre. They are superior to the subject. The backage rate used in the area is \$\$\$\$\$ which is close to the overall average rate of \$\$\$\$\$. The assessed value of \$\$\$\$\$ is within the range suggested by Petitioner's real estate agent.

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The preponderance of evidence, based on the assessor's testimony for the comparable sales indicates that the property is properly assessed. In spite of the lack of utilities, and the broker's suggested listing price, the relevant comparable sales ranged from \$\$\$\$\$ to \$\$\$\$\$ per acre, which is higher than the assessed value. Petitioner provided no evidence that difference between the value of the subject property and the comparable sales, about \$\$\$\$\$ to \$\$\$\$\$ per acre, was not enough to account for the lack of direct road access and utilities.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the property is \$\$\$\$\$. The value set by the Board of Equalization is sustained.

It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

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Marc B. Johnson
Commissioner

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D'Arcy Dixon Pignanelli
Commissioner