

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF WEBER COUNTY, UTAH,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 06-1452</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2006</p> <p>Judge: Phan</p>
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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:

Pam Hendrickson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE, Weber County Assessor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 29, 2007. 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, 2006.

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2. The property at issue is Parcel No. #####, located at (X), (X), CITY, Utah.

3. For the January 1, 2006 lien date the County Assessor had valued the property at \$\$\$\$ and the County Board of Equalization had sustained the value.

4. The property consists of 37.60 acre of land suitable for two home sites. The property has year round access on (X) and there is electricity to the property. The property is zoned F-5. There is a small cabin on the property, which the County valued for storage only. There is also a mobile home on the property. The subject property is bisected by (X).

5. Petitioner explained that the property taxes had increased from approximately \$\$\$\$ to \$\$\$\$ in one year's time. She indicated that the land had been in her family and had been farmed or grazed since 1850. About four acres is suitable for growing alfalfa. She indicated that much of the property was poor graze land. Petitioner indicated that it would be impossible to pay the tax based on the agricultural value of this property. On May 1, 2007, Petitioner had applied to have the property valued as greenbelt under the Farmland Assessment Act. The property was not valued as greenbelt for the subject year and Petitioner had not applied prior to May 1, 2007.

6. Petitioner submitted receipts of farming activity beginning in March 2005.

7. Petitioner did not provide evidence of the fair market value. Instead she argued that the value of this property should be based on its agricultural value, that the value should not be based on the sale price of the properties in the area because they were not being purchased for agricultural use.

8. Respondent submitted an appraisal in this matter prepared by RESPONDENT REPRESENTATIVE, Weber County Assessor. In was RESPONDENT REPRESENTATIVE'S appraisal conclusion that the value of the property as of the lien date at issue was \$\$\$\$\$, which was higher than the value set by the County Board of Equalization.

9. In the appraisal, RESPONDENT REPRESENTATIVE considered five comparable sales of

similar sized properties. One of these comparables had 39.07 acres with summer only access. This property had sold for \$\$\$\$\$, but would be inferior to the subject. The other four comparables had year round access like the subject and had sold in a range from \$\$\$\$\$ to \$\$\$\$\$.

10. These comparables were similar as far as size. The highest sale price of the comparables was also the nearest in location to the subject. This comparable had 35.16 acres and had sold for \$\$\$\$\$. It was also located on (X), only .23 miles from the subject. A second comparable on (X), which was only 16.39 acres, had sold for \$\$\$\$\$. The appraisal clearly supported a fair market value for the subject property of at least \$\$\$\$\$.

11. RESPONDENT REPRESENTATIVE pointed out that Petitioner had not applied for greenbelt assessment until May of 2007. She indicated that the highest and best use of this property was for two home sites. If the property was placed on greenbelt for 2007, the tax amount would be based on an agricultural value for subsequent years.

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 provide 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. (Utah Code Ann. Sec. 59-2-1006(1).)

4. For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land is actively devoted to agricultural use and has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part. (Utah Code Ann. Sec. 59-2-502.)

5. If an owner of land eligible for assessment under this part (for agricultural use) wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located by May 1 of the tax year in which the assessment is requested. (Utah Code Ann. Sec. 59-2-508(1).)

CONCLUSIONS OF LAW

1. The law provides that property tax is generally based on its fair market value. This is the value at which the 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. When determining fair market value it is the highest and best use of the property that determines the value, not the actual use. (Utah Code Secs. 59-2-103 & 102(12).)

2. There are some exceptions to the general fair market value standard for property tax assessment. One of those is set out in the Farmland Assessment Act, at Utah Code Sec. 59-2-501 et al. If a

property owner meets all of the requirements under the act, the tax amount will be based on the value of the property for agricultural purposes, subject to roll back provisions if the property use changes. However, one of the requirements is the application, which Petitioner had not submitted for the 2006 year.

3. Therefore the value of the property for the 2006 property tax assessment must be determined by the fair market value standard. Petitioner has provided no evidence that contradicts Respondent's appraisal of this property. 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). The Commission would note that it is the value set by the County Board of Equalization that has the presumption of being correct, so that the County has the burden of proof to show a higher value.

DECISION AND ORDER

In this matter Petitioner has not provided sufficient evidence of a lower fair market value. Respondent has clearly supported a higher value and has met its burden in this matter.

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2006, is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2008.

Jane Phan
Administrative Law Judge

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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 _____, 2008.

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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