

06-1469
Property Tax/Locally Assessed
Signed 08/17/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,	ORDER
Petitioners,	Appeal No. 06-1469
vs.	Parcel No. #####
BOARD OF EQUALIZATION OF IRON COUNTY, UTAH,	Tax Type: Property Tax/Locally Assessed
Respondent.	Tax Year: 2006
	Judge: Jensen

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:

Pam Hendrickson, Commission Chair
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
PETITIONER 2
For Respondent: RESPONDENT REPRESENTATIVE 1, Iron County Assessor
RESPONDENT REPRESENTATIVE 2, from the Iron County
Assessor's Office

STATEMENT OF THE CASE

Petitioners bring this appeal from the decision of the Iron County Board of Equalization. This matter was argued in an Initial Hearing on April 5, 2007. Petitioners are appealing the market value of the subject property as set by Respondent for property tax purposes. The lien date at issue in this matter is January 1, 2006.

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(11).)

Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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”

Any party requesting a value different from the value established by the county board of equalization has the burden to establish that the market value of the subject property is other than the value determined by the county board of equalization.

To prevail, a party requesting a value that is different from that determined by the county board of equalization must (1) demonstrate that the value established by the county board of equalization contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the county board of equalization to the amount proposed by the party. *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

The subject property is parcel no. #####, located at ADDRESS in CITY, Utah. It is a five-acre parcel. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$ per acre or \$\$\$\$\$ for the five-acre parcel. The parties agree that this amount was in error and that the Assessor corrected that error by lowering the value of the parcel to \$\$\$\$\$ at the board of equalization level. The County Board of Equalization accepted the assessor’s correction and reduced the value to \$\$\$\$\$ per acre, or \$\$\$\$\$ for the five acres. Petitioners request that the value be further reduced but did not specify a suggested value. Respondent requests that the value set by the County Board of Equalization be sustained at \$\$\$\$\$.

The subject property is directly behind a five-acre parcel upon which the Petitioners’ home is built. It has no water. Petitioners use the subject as excess land for open space. The parties agree that if water were available, current zoning would allow for development.

Petitioners indicated that they have no plans to sell the subject property or to build on it. Petitioners have considered consolidating the subject into the lot on which their residence is built. As of the lien date, they had not done so.

Petitioners have the burden of proof in this matter and must demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. In this matter, Petitioners indicated that the subject had no water rights and thus should not have been valued as property with water available. They did not present sales of comparable properties to show what their property would be worth without water. Rather, they argued that the five acres on which their home is built is also valued at \$\$\$\$ per acre, and it has water and the necessary approvals for the home that is built on it.

Because the Petitioners did not present information to indicate the amount for which the subject would sell, there is not evidence to lower the value of the subject under a normal valuation argument. Petitioners' comparison of the assessed valuation of the subject parcel to the assessed value of another parcel does, however raise a different argument. A request to lower the value of one parcel on a theory that it is overvalued when compared to the assessed valuation of comparable properties is known as an equalization argument. A taxpayer making an equalization argument does not need to present comparable sales, but Utah Code Ann. §59-2-1006(4), the statute creating the right to challenge property valuation on the basis of equalization, is specific in what the taxpayer does need to provide:

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.

Interpreting this section, the Utah Supreme Court has explained that the plural “comparable properties,” as used in Utah Code Ann. §59-2-1006(4)(b), requires “a party seeking an adjustment to present more than one similar but disparately valued property to be eligible for a valuation adjustment.” *Mountain Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86 ¶8.

Applying Utah Code Ann. §59-2-1006(4) and *Mountain Ranch Estates*, the Commission concludes that Petitioners have presented information on the assessed valuation of only one

parcel. While the statute does not specify how many comparable properties the taxpayer making an equalization argument needs to present, it is clear that a taxpayer needs to bring more than one. On that basis, the Commission concludes that Petitioners have not presented a basis to lower the value of their property on the basis of equalization.

Respondent provided evidence of the sales of eleven properties in the area of the subject with sale dates from January 1998 to July 2005. The price range was from \$\$\$\$\$ to \$\$\$\$\$ per acre and the average selling price per acre was \$\$\$\$\$ per acre. All but two of the county's comparable sales were in 2005 and 2006. The county's representative indicated that the county included the sales from 1998 because they were very similar to the subject in that they were parcels that could otherwise be developed except that they had no water. The county presented the 1998 sales to show that as far back as 1998, similar properties without water were selling for \$\$\$\$\$ and \$\$\$\$\$ per acre.

Considering the evidence presented, the Commission concludes that Petitioners have not borne their burden of proof with regard to showing a lower valuation on the basis of sales of comparable properties or on the basis of equalizing the subject to similar properties. Because Petitioners have not borne their burden of proof, the Commission sustains the \$\$\$\$\$ value as determined by the County Board of Equalization.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2006 is \$\$\$\$\$. It is so ordered.

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.

Clinton Jensen

Appeal No. 06-1469

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

CDJ/06-1469.resprop.int