

06-1536  
Property Tax/Locally Assessed  
Signed 09/13/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF IRON COUNTY, UTAH,</p> <p>Respondent.</p>	<p><b>ORDER</b></p> <p>Appeal No. 06-1536</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2006</p> <p>Judge: Jensen</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 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:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE, Iron County Assessor

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the Iron County Board of Equalization. This matter was argued in an Initial Hearing on June 25, 2007. Petitioner is 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 part of parcel no. #####, located near the intersection of STREET 1 and HIGHWAY 1 in Iron County. Although parcel no. ##### contains a residential dwelling valued at \$\$\$\$\$ and a one-acre home site valued at \$\$\$\$\$, the residential dwelling and home site are not under appeal. The subject property, as described in this appeal, is limited to 70.49 acres

of parcel no. #####. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The County Board of Equalization sustained the value. Petitioner requests that the value be reduced to \$\$\$\$\$. Respondent requests that the value set by the County Board of Equalization be sustained.

The subject property is 70.49 acres. The parties agree that the highest and best use of the subject would to be for future subdivision development, notwithstanding several challenges to development. The subject has water, but Petitioner maintains that the water available with the property is insufficient to allow for full development as a subdivision.

Petitioner has 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 Petitioner provided a contract of sale for the subject property dated November 21, 2005. As consideration for selling the subject property, the contract indicated that Petitioner was to receive \$\$\$\$\$ in cash, six developed lots starting at STREET 1 along the west side of a street to be built in a proposed subdivision, commercial property along HIGHWAY 1 starting at the south of the property and going north, and one half of the net proceeds from the sale of additional lots after certain costs are paid. In addition to the contract of sale for the subject parcel, Petitioner provided evidence of the sales of two comparable properties. These properties were a May 2005 sale of 73.5 acres for \$\$\$\$\$ per acre and a February 2006 sale of 157.05 acres for \$\$\$\$\$ per acre. These were sales from a family partnership to another entity for land development. Both comparables had the same seller, and both comparables had the same buyer. The Petitioner provided a legal description for one of these comparables, but did not provide a physical location for either of them. The Petitioner indicated that these comparables had better sewer availability than the subject; the county representative argued that the subject had the better ability to connect to sewer.

Respondent provided evidence of the sales of four comparable properties with sale dates from September 2005 to March 2006. The parcel sizes ranged from 16.67 acres to 120 acres. The smallest parcel had the lowest per-acre price at \$\$\$\$\$ per acre, but the county's representative explained that this parcel had an irregular shape and had problems with a power substation and power lines. The remaining county comparables had per-acre selling prices from \$\$\$\$\$ to \$\$\$\$\$ per acre. The county provided a map showing that all four of the county comparables are close to the subject.

The Commission considers the evidence in light of the Petitioner's burden of proof to show error in the value as determined by the board of equalization and to provide a sound evidentiary basis for reducing the value of the subject. The Petitioner's evidence regarding the sale of the subject parcel has elements of a joint venture and has non-cash elements. Reviewing this contract, the Commission does not have sufficient evidence settle on a selling price in cash as required by Utah statute. From the evidence presented, the Commission does not have a description of the physical location of Petitioner's comparables and thus lacks the evidence needed to make a finding that these are comparables that are more like the subject than those presented by the county. Because Utah statutes place the burden of proof on the Petitioner for these questions, this lack of evidence prevents the Commission from disturbing the value as determined by the Board of Equalization.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the 70.49 acres of the subject property at issue is \$\$\$\$\$ per acre, for a total of \$\$\$\$\$ as of January 1, 2006 as determined by the Board of Equalization. When added to the values of the residential dwelling and home site, this makes the value of parcel no. ##### a total \$\$\$\$\$ as of January 1, 2006. It is so ordered.

Appeal No. 06-1536

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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Clinton Jensen  
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

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