

06-1656
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2006
SIGNED 06-29-07

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	INITIAL HEARING ORDER
)	
Petitioners,)	Appeal No. 06-1656
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	Commercial
RURAL COUNTY, UTAH)	Tax Year: 2006
)	
Respondent.)	Judge: Hendrickson, Johnson
)	

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
Bruce Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER 1
 PETITIONER 2
For Respondent: RESPONDENT REP 1, Assessor, RURAL County
 RESPONDENT REP 2, Deputy Auditor, RURAL County
 RESPONDENT REP 3, Deputy RURAL County Assessor
 RESPONDENT REP 4, RURAL County Contract Appraiser
 RESPONDENT REP 5, Deputy RURAL County Attorney

STATEMENT OF THE CASE

Petitioners bring this appeal from the decision of the RURAL County Board of Equalization. This matter was argued in an Initial Hearing pursuant to the provisions of Utah

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Code Ann. Sec. 59-1-502.5, on June 6, 2007. Petitioners are appealing the assessed value established for the subject property by the RURAL County Board of Equalization. The lien date at issue 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 provided 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 is parcel no. ##### and is located at ADDRESS, CITY, Utah. The RURAL County Assessor’s Office had originally set the value of the subject property, as of the lien date, at \$\$\$\$\$. The RURAL County Board of Equalization reduced the value to \$\$\$\$\$, allocated as follows:

Commercial land	\$\$\$\$\$
Improvements	\$\$\$\$\$
Total	<u>\$\$\$\$\$</u>

The subject property consists of 1.83 acres of land improved with a combined truck stop/warehouse building of 7,726 square feet, and two oversized (X) that apparently sheltered fuel pumps when the property was operated as a (X). The property has about 200 feet of frontage on ROAD. The improvements were constructed in 1960 and are in disrepair. The property is currently being used as a (X).

As noted, the property was originally operated as a truck stop. During its operation, it suffered serious environmental contamination. The property was effectively abandoned by the prior owners and was purchased by Petitioners in 2004 at a tax sale. They paid \$\$\$\$\$ for the property at that time.

Several test holes have been drilled on the property and it appears there is still significant contamination. There was also contaminated ground water that was migrating from the property. The migrating ground water problem has been addressed by the Environmental Protection Agency (“EPA”). Trees have been planted along the borders of the property to mitigate the contamination. At this point, the migration problem has been resolved to the satisfaction of the EPA and its case is closed. Significant contamination remains on the site itself, however. Petitioners contacted the Utah Department of Environmental Quality (“DEQ”) to determine what might be necessary to clean-up the property. After some initial consultations, Petitioners

determined that the cost of pursuing a clean-up under the auspices of DEQ would be prohibitive so they did not complete the application.

Because of the contamination, the County originally refused to provide a business license to Petitioners. A business license has now been provided and Petitioners are using the property for a **truck repair** facility and apparently were using it on the lien date. Until the contamination issue is resolved, however, the County will not authorize a building permit that requires any excavation on the property.

In a property tax case, the taxpayer has the burden of showing an error in the Board of Equalization value. Petitioners here have met that burden. The Board of Equalization decision was based, at least in part, on the conclusion that “[the environmental officials] have issued a letter that the property is clean from contamination.” This conclusion was erroneous. The **ground water migration** problem had been dealt with, but the property was not clean. Similarly, the valuation originally presented by the County at this hearing assumed the property was “clean.” It is clear it was not. Similarly, the comparable sales used by the County were of clean properties, so they are clearly not comparable to the subject.

Petitioners, having carried the burden of showing error in the Board’s valuation, also have the burden to provide sound evidentiary support for a more reasonable value. Petitioners’ only suggested value was the value at which they purchased the property at a tax sale three years ago. They did, however, provide an unsigned bid that indicated the cost of removing the contaminated soil would be in excess of \$\$\$\$\$. Although the exact amount may be in question, there is no serious doubt that the cost of removing the contaminated soil would exceed \$\$\$\$\$, the value currently placed on the land. It is also true, however, that the building is suitable for its current use and that the property itself could be used for parking trucks and heavy equipment. The County opined that an improvement could also be constructed on a pad.

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Under these circumstances the Commission believes that the approach approved by the Court of Appeals in *Salt Lake County BOE v. Utah State Tax Commission, ex rel. (X)*, No. 2005 Ut. App. 360 (2005) is appropriate. See also, *(X) v. Utah State Tax Commission*, 980 P.2d 690 (Utah 1999). In *(X)*, the taxpayer's home was on a Superfund site. The evidence indicated that the cost to cure the contamination exceeded the land value. The taxpayer continued to occupy the home. The Commission upheld the value of the improvement, but reduced the land value to zero. The Court of Appeals affirmed that holding.

Applying that rationale to this case, we hold that the value of the improvements is \$\$\$\$\$, the value determined by the Board of Equalization. The cost to clean up the land, however, exceeds its current market value, so, in the absence of any evidence of sales of similarly contaminated land, we find the value of the land to be zero.

DECISION AND ORDER

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

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DATED this ____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

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.

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

PH/int