

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,</p> <p>Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 06-1686</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

For Respondent: RESPONDENT REPRESENTATIVE, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 15, 2008. 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.
2. The subject property, parcel no. #####, is located at ADDRESS in CITY 1, Utah. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The County Board of Equalization lowered the value to \$\$\$\$\$. Petitioner requests that the value be reduced to \$\$\$\$\$. Respondent

requests that the value set by the County Board of Equalization be sustained.

3. The subject property consists of a .57-acre lot improved with a two-story residence. The residence was originally constructed in 1856 and had additional square footage added in 1876. The residence is built of stone. It is built of construction methods and materials typical of the time in which it was built. The walls are thick at the bottom and taper as they go up. The basement walls are over seven feet thick in some places and taper to nearly three feet at the level of the main floor. Petitioner indicated that the main floor has approximately 620 square feet and that the second story has approximately 250 square feet. These are inside dimensions, which Petitioner argues are more appropriate for this property than outside measurements because the thick walls cause more than normal lost space from outside measurements. The residence has a basement, but the parties generally agree that it adds little value because its pioneer-era construction and ceiling height of approximately five feet make it more of a cellar than a basement. There is also an outbuilding of approximately 360 square feet originally constructed as a blacksmith shop. Although the residence is well preserved for its age, it and the detached outbuilding are in varying states of disrepair.

4. as of January 1, 2006, there were no legal impediments to prevent a future purchaser of the subject property from using it for development by removing the existing historic home.

5. Petitioner argued that the subject should be valued as a property with its existing historic single-family dwelling. She presented evidence of the sales of four comparable properties with sale dates from April 2005 to April 2006. Three were in CITY 2 between 5.6 miles and 6.0 miles from the subject and one was 16.7 miles away in CITY 3. All had smaller lots than the subject. The oldest of Petitioner's comparable properties was constructed in 1943 and the newest was constructed in 1975. There was no evidence that Petitioner's comparable sales were historic properties or had styles or construction like the subject. Depending on the manner of calculating square footage, all likely had more usable square feet than the subject. The four comparable properties had selling prices between \$\$\$\$\$ and \$\$\$\$\$.

6. The county presented evidence in the form of the sales of comparable properties indicating that the highest and best use of the subject was not as a lot with a pioneer-era home. Rather, properties like the subject were worth more with the home removed. The county assumed no value to the buildings on the subject property and, to the extent that building new structures would require demolition work, the county gave the subject's residence and outbuilding a negative value.

7. The county provided an appraisal, prepared by RESPONDENT REPRESENTATIVE. It was the appraiser's conclusion that the value for the subject property as of the lien date at issue was \$\$\$\$\$. The

county's appraiser relied on the sales of nine comparable properties without homes or with homes that had to be removed with sale dates from January 2005 to January 2006. The comparable properties were from three to eight blocks from the subject. The appraiser made adjustments to compensate for differences between the subject property and the comparable properties in factors such as time of sale, lot size, allowance of horses on the property, and whether there would be demolition costs to use the property as a new building lot. After making adjustment for factors that the appraiser considered would influence market value, the comparable sales had adjusted selling prices from \$\$\$\$\$ to \$\$\$\$\$.

8. On the basis of the evidence presented, the Tax Commission determines that, for property tax appraisal purposes, the highest and best use of the subject property as of January 1, 2006 would be as a building lot.

#### 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 provided 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. Generally, land is assessed for property tax purposes according to its "highest and best" use. *Board of Equalization of Salt Lake Co. v. Utah State Tax Comm'n*, 846 P.2d 1292, 1295 (Utah 1993). The phrase "highest and best use" functions as a term of art under Utah law. It means the use that would best maximize economic value. *See generally*, Appraisal Institute, *The Appraisal of Real Estate* 305 – 06 (Twelfth ed. 2001). To be a "highest and best use," a proposed use must be: 1. Physically possible; 2. Legally permissible; 3. Financially feasible; and 4. Maximally productive. *Id.* at 307.

#### DISCUSSION

Petitioner presented evidence of a residential property that, for aesthetic purposes, would be an excellent property for protection and preservation. However, Utah law and principles of appraisal for taxation

require government entities to value properties for taxation purposes at fair market value according to a property's highest and best use for economic purposes. Unless and until a property owner takes steps to place easements, qualify for special statutory benefits, or otherwise puts legal safeguards in place to prevent development beyond a property's current use, the Commission must value a property in accordance with the use that would bring the best economic value. Legal safeguards are an integral part of an analysis for highest and best use because a legal protection such as a preservation easement that forbids demolition of historic structures means that demolition and development are no longer "legally permissible" uses. Because they are not legally permissible uses, demolition and use as a building lot then have no place in an analysis for highest and best use.

As of January 1, 2006, Petition had put no legal safeguards in place to prevent a buyer from developing the subject property. Accordingly, the Tax Commission has to value the subject as a property that could be sold as a building lot for the 2006 tax year. The Commission notes that legally permissible highest and best use can change over time. The subject property need not be always valued as developable property if there is a future change to limit the uses to which the subject property can be put.

CONCLUSIONS OF LAW

1. 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).

2. In this matter Petitioner has not borne the burden of proof required to show error in the value for the subject property as determined by the board of equalization for the 2006 tax year.

DECISION AND ORDER

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Clinton Jensen  
Administrative Law Judge

Appeal No. 06-1686

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

**Commissioner D’Arcy Dixon Pignanelli, Concurring:**

I concur in the outcome that the other Commissioners reach in this case, but reach the same conclusion by a somewhat different means. Because my colleagues accepted the county’s position that the highest and best use of the subject property would be to tear down an historic home, they did not need to review Petitioner’s comparable sales. I cannot agree that a piece of history has no value, or worse, a negative value. A piece of history is lost forever upon the destruction of any historic building. Accordingly, I have considered Petitioner’s comparable sales and do not find them comparable. Therefore, the taxpayer has not borne the burden of proof.

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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. 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 Ann. §59-1-601 and 63-46b-13 et. seq.

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