

07-0056  
Locally Assessed Property  
Signed 03/26/2008

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

v.

BOARD OF EQUALIZATION OF  
DAVIS COUNTY, STATE OF UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND FINAL DECISION**

Appeal No. 07-0056

Parcel Nos. #####-1  
#####-2

Tax Type: Property Tax / Locally Assessed

Tax Year: 2006

Judge: Chapman

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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:**

Marc B. Johnson, Commissioner  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE  
For Respondent: RESPONDENT REPRESENTATIVE 1, Attorney, Davis County Attorney's  
Office  
RESPONDENT REPRESENTATIVE 2, Appraiser, Davis County Assessor's  
Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 5, 2008. At the hearing, the County was given ten days to respond to the Petitioner's exhibits, which the County had not had an opportunity to review prior to the hearing. The County, however, did not submit a response to the Petitioner's exhibits. Based upon the evidence and testimony presented at the hearing, the Tax

Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is property tax.
2. The lien date at issue is January 1, 2006.
3. At issue is the fair market value of two unimproved parcels of land that are located in Davis County near ( X ) (“( X )”). Although the two properties are not adjacent, they are located near one another. The first property is identified as Parcel No. #####-1 (hereinafter referred to as “Parcel #####-1”). The second property is identified as Parcel No. #####-2 (hereinafter referred to as “Parcel #####-2”).
4. The County originally assessed Parcel #####-1 at \$\$\$\$\$, which the Davis County Board of Equalization (“County BOE”) sustained.
5. The County originally assessed Parcel #####-2 at \$\$\$\$\$, which the County BOE also sustained.
6. For the 2006 tax year, both properties were taxed on their “greenbelt” value pursuant to the Utah Farmland Assessment Act. The greenbelt values of the subject properties, however, are not at issue in this appeal.
7. At the hearing, the Petitioner asked the Commission to reduce the value of Parcel #####-1 to \$\$\$\$\$ and the value of Parcel #####-2 to \$\$\$\$\$. The County asked the Commission to sustain the values established by the County BOE for the two properties.
8. Parcel #####-1 is 32.17 acres of vacant, unimproved land. This parcel is located on a steeply sloped hillside and is zoned A-1, which is a limited agricultural use. The slope alone on this property would limit development, and the parties agree that it is currently undevelopable.

9. Parcel #####-2 is 59.75 acres in size and is also comprised of vacant, unimproved land. As of the lien date, this parcel was zoned NR or Natural Resources. Parcel #####-2 is more level than Parcel #####-1 and has a rolling topography. The parties agree that this parcel is also currently undevelopable.

10. Both subject properties are located near the ( X ). The County does not contest that the subject properties are contaminated. The Petitioner, however, believes that the County has underestimated the importance of the contamination in valuing the properties.

County's Information and Arguments

11. The County submitted an appraisal prepared by RESPONDENT REPRESENTATIVE 2, an appraiser in the County Assessor's Office, for each of the subject properties. County's Exhibit R-1 and Exhibit R-2. In his appraisals, RESPONDENT REPRESENTATIVE 2 estimated Parcel #####-1 to have a fair market value of \$\$\$\$\$ and Parcel #####-2 to have a fair market value of \$\$\$\$\$. However, RESPONDENT REPRESENTATIVE 2 stated that he offered the appraisal in support of the \$\$\$\$\$ value for Parcel #####-1 and the \$\$\$\$\$ value for Parcel #####-2, as established by the County BOE. He specifically stated that he was not asking for either of the subject properties' current values to be raised.

12. In each of his appraisals, RESPONDENT REPRESENTATIVE 2's estimate of value was based on a sales comparable approach in which he compared the subject properties to four sales of relatively large, unimproved parcels of land located throughout Davis County. None of the parcels were contaminated. RESPONDENT REPRESENTATIVE 2 indicated that there were "few sales of large parcels with severely limited or no potential for future development" to compare to the subject properties. RESPONDENT REPRESENTATIVE 2 also admitted that he looked for and could not locate any comparable sales of properties as polluted as the subject properties.

13. The four comparables used by RESPONDENT REPRESENTATIVE 2 in his sales comparison approach were located in different areas of Davis County and were not in close proximity to the

subject properties. The comparables, which range in size from 12.07 acres to 40.00 acres, sold for prices that range from \$\$\$\$\$ to \$\$\$\$\$. The sales prices equate to prices per acre that range from \$\$\$\$\$ to \$\$\$\$\$ per acre.

14. In each of his appraisals, RESPONDENT REPRESENTATIVE 2 included a “contamination study” that he had prepared to determine whether or not to adjust the subject properties’ values because of contamination. RESPONDENT REPRESENTATIVE 2 considered residential property sales that had occurred in Davis County in or near the contamination plumes in the CITY 1, CITY 2 and CITY 3 areas of the County. RESPONDENT REPRESENTATIVE 2 concluded from these sales that no discernable difference existed in the market value of residential parcels from inside the plume as opposed to residential parcels outside the plume. As a result, RESPONDENT REPRESENTATIVE 2 determined that the contamination on the subject properties did not affect their respective fair market values. For these reasons, RESPONDENT REPRESENTATIVE 2 did not adjust any of his comparable sales in determining his estimates of value for the subject properties.

15. RESPONDENT REPRESENTATIVE 2 admitted that he did not know if persons residing within the contaminated areas had tested positive for contaminants or if they knew that their homes were located on contaminated land at the time of purchase. He also admitted that he did not know the types of contaminants or the potential of exposure that existed in the areas he included in his contamination study.

16. RESPONDENT REPRESENTATIVE 2 also admitted that he did not understand the contamination reports he had received from ( X ) concerning the contaminants affecting the subject properties and that he did not know the types of or level of contaminants affecting the subject properties.

17. Even though RESPONDENT REPRESENTATIVE 2 did not adjust his comparable sales for contamination, he adjusted them for other factors, such as size and market conditions, and arrived at adjusted prices of \$\$\$\$\$ to \$\$\$\$\$ per acre for Parcel #####-1 and \$\$\$\$\$ to \$\$\$\$\$ per acre for Parcel #####-2.

By taking a median and a mean of the four adjusted sales prices for each subject property, RESPONDENT REPRESENTATIVE 2 estimated a value of \$\$\$\$ per acre for Parcel #####-1 and \$\$\$\$ per acre for Parcel #####-2. These prices per acre resulted in the fair market value estimates of \$\$\$\$ for Parcel #####-1 and \$\$\$\$ for Parcel #####-2.

Petitioner's Information and Arguments

18. The Petitioner did not submit an appraisal of either subject property. For the Petitioner, PETITIONER REPRESENTATIVE testified that no appraiser he approached to appraise the properties would do so because of the contamination affecting the properties.

19. PETITIONER REPRESENTATIVE testified that he had knowledge of the contamination that exists on the subject properties, as well as the ( X ), because his family identified the pollution “leaking” out of ( X ) in the 1960s.

20. PETITIONER REPRESENTATIVE criticized the County's appraisals because the appraiser used comparables sales that did not have contamination problems and because the appraiser did not identify all of his sources of information. PETITIONER REPRESENTATIVE testified that the subject properties are far more polluted than the County's comparables sales and are more polluted than any party on whom the County may have received information or relied would admit.

21. PETITIONER REPRESENTATIVE submitted a lease between the ( X ) (“( X )”) and the Petitioner showing that the ( X ) has agreed to remove arsenic-impacted sediment from certain parcels of land, including portions of Parcel #####-1. Petitioner's Exhibit P-1. PETITIONER REPRESENTATIVE also submitted a document showing that he has hired an environmental and engineering firm to review a “work plan” to remediate the arsenic-impacted sediment to be removed by the ( X ). Petitioner's Exhibit P-2. In addition, PETITIONER REPRESENTATIVE submitted a document from CITY 4 indicating that existing

plume maps showing contamination are not exact and may not show all contaminants affecting a property. Petitioner's Exhibit P-3.

22. PETITIONER REPRESENTATIVE also testified that he could not farm or graze the subject properties because of possible liability associated with producing tainted food. He stated, however, that horses could be placed on the properties, even though he claimed to have been advised not to put any animals on them.

23. Because of the contamination issues associated with the subject properties, PETITIONER REPRESENTATIVE testified that it is his belief that the properties currently have a negative value. However, he stated that the properties could possibly have value to a land speculator. For these reasons, he believes that a reasonable fair market value for Parcel #####-1 is \$\$\$\$\$ and for Parcel #####-2 is \$\$\$\$\$.

#### APPLICABLE LAW

1. Utah Code Ann. §59-2-103(1) provides that “[a]ll 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. For property tax purposes, “fair market value” is defined in UCA §59-2-102(12) to mean:

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. . . .

3. 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 must: 1) demonstrate that the value

established by the county board of equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the county board of equalization to the amount proposed by the party. *See 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).

4. UCA §59-2-504(3) provides that the “county board of equalization shall review the agricultural use value and fair market value assessments each year as provided under Section 59-2-1001.”

5. When a rollback tax is imposed for purposes of the Utah Farmland Assessment Act, UCA §59-2-506(10)(a) provides that:

- (a) . . . an owner of land may appeal to the county board of equalization:
  - (i) a decision by a county assessor to withdraw land from assessment under this part: or
  - (ii) the imposition of a rollback tax under this section.

#### CONCLUSIONS OF LAW

1. The County argued that the Petitioner did not have standing to appeal the fair market values of the subject properties because the properties are currently taxed at their respective “greenbelt” values (i.e., for agricultural use). Until the Petitioner decides to sell the subject properties and becomes liable for the rollback tax, the County contends that the Petitioner may not appeal the fair market values of the subject properties.

The Commission disagrees. Section 59-2-504(3) provides that a taxpayer shall, each year, appeal the fair market value of land subject to greenbelt valuation and taxation. Furthermore, Section 59-2-506(10) specifies the appeal rights to which a taxpayer subject to the rollback tax is entitled. These appeal rights do not include the right to appeal the fair market value applicable to each year of the rollback. For these

reasons, the Commission finds that the Petitioner has standing to appeal the 2006 fair market values of the two subject properties.

2. The Commission does not find the County's appraisals to be persuasive. Of primary concern is the County's determination that the contamination affecting the subject properties has no impact on their respective values. The Commission is not convinced that the County appraiser has sufficient understanding of the contamination issues to determine whether or not the contamination on the subject properties affects value. Furthermore, the Commission does not find the appraiser's contamination study of dissimilar properties (i.e., residential homes) to be persuasive. Finally, the comparable sales used to estimate the subject properties' values in the appraisals do not appear similar enough to the subject properties to be persuasive.

The Commission, however, notes that the County has no requirement to defend or produce evidence showing the correctness of the values established by the County BOE in this case. It is the party requesting a change of value that has the burden of proof to show that the County BOE value is incorrect and to present convincing evidence of what the value should be. The Petitioner has not met this burden. Although the Petitioner has shown that the subject properties are contaminated and that the County's appraisals are not convincing, such evidence does not show whether the values established by the County BOE are correct or not. Furthermore, the Petitioner's "guess" at what a speculator would pay for the subject properties is not supported by evidence and is unpersuasive. For these reasons, the Commission finds that the Petitioner has not met its burden to have the value of either subject property reduced.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the \$\$\$\$ value that the County BOE established for Parcel No. #####-1 and the \$\$\$\$ value established for Parcel No. #####-2. Accordingly, the Petitioner's appeal is denied. It is so ordered.



Appeal No. 07-0056

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

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Kerry R. Chapman  
Administrative Law Judge

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. §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 et seq. and §63-46b-13 et seq.

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