

07-0058
Locally Assessed Property
Signed 03/12/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioner,

vs.

BOARD OF EQUALIZATION OF SUMMIT
COUNTY, UTAH,

Respondent.

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

Appeal No. 07-0058

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

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:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
PETITIONER 2

For Respondent: RESPONDENT REPRESENTATIVE 1, Summit County Assessor
RESPONDENT REPRESENTATIVE 2, from the Summit County Assessor's
Office
RESPONDENT REPRESENTATIVE 3, from the Summit County Assessor's
Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 7, 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 approximately ADDRESS in CITY, Utah. 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.

3. The subject property consists of a five-acre unimproved lot. The lot is 330 feet wide and 660 feet deep and fronts onto a private gravel road known as STREET. It does not have water rights associated with it and currently has no utilities on site. The northwest corner of the property is relatively flat and level and gets steeper toward the southeast corner. The current zoning for the area would require 40 acres to build a residence, but the subject has a pre-existing subdivision that would allow for the building of one residence on the five-acre lot.

4. Petitioner presented evidence that the subject property is encumbered by an easement of 25 feet by 330 feet across the front and another easement of 25 feet by 330 feet across the back of the property. Petitioner argued that the county should not tax on this property because future road development will take the property encumbered with the easements. Petitioner did not present evidence that the property subject to the easement had been deeded to the county or another party.

5. Petitioner testified that the county's comparable properties are superior to the subject in that one is more level than the subject and has a well on site, another might be a larger parcel than is listed by the county, and another has water rights and is closer to utilities. Petitioner did not present any evidence of comparable sales.

6. Petitioner testified that the subject should be equalized in value to the property just east of the subject, which was also five acres but valued at only \$\$\$\$\$ for the 2006 tax year.

7. The county provided an appraisal, prepared by RESPONDENT REPRESENTATIVE 3. 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 three comparable properties with sale dates from March 2005 to May 2006. The comparable properties were from .05 of a mile to .33 of a mile 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, and view. After making adjustment for factors that the appraiser considered would influence market value, the comparable sales had adjusted selling prices from \$\$\$\$\$ to \$\$\$\$\$.

8. As for Petitioner's concerns that some of the comparable properties were superior to the subject, the

appraiser testified that he determined that utilities were available in STREET, and that the availability of utilities and water would be about the same for the subject as for the comparable properties. As for slope, the appraiser's testimony was that while increasing slope increased building costs, the superior view associated with increased slope generally increased property values to at least the amount that would be realized for flat or low-lying ground. With regard to the well on one of the comparable sales, the appraiser noted that the subject has water available through COMPANY and that properties with this water availability generally sell for the same amount as properties with well water. The appraiser testified that the 25-foot easements of which Petitioner complained were common for properties in the area and thus did not influence value.

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. "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. 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. 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).) Because Utah Code Ann. Sec. 59-2-1006 makes reference to the plural "comparable properties," a taxpayer making an equalization argument is required to present multiple comparable properties to make a valid equalization claim. While the number of comparable properties required may vary from case to case, a taxpayer presenting only one comparable property will not prevail on an equalization claim under any circumstance. *See Mountain Ranch Estates v. Tax Comm'n*, 2004 UT 86 ¶9.

DISCUSSION

The Commission reviews the evidence in this case mindful of the duties that Utah law impose on a party requesting a change in value from that established by the county board of equalization. Petitioner has not presented any comparable sales or other evidence that would give support for the contention that \$\$\$\$ value as determined by the board of equalization was in error. Similarly, Petitioner has presented no comparable sales or other evidence to show that the subject would sell for the requested value of \$\$\$\$\$. Accordingly, Petitioner has not borne the burden of proof required to gain a reduction in property value from the \$\$\$\$ value as determined by the board of equalization.

Reviewing Petitioner’s claim to equalize the value of the subject to the property to the east that has the same number of acres as the subject, Petitioner has presented evidence of the assessment of only one property. Also, Petitioner has not shown that any differences in assessed value of the subject and the property to the east cannot be explained by differences in access. This is not sufficient evidence to allow the Tax Commission to lower the value of the subject property to equalize it to comparable properties.

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’s evidence was not sufficient to show error in the value as determined by the board of equalization.

3. Petitioner’s evidence included the assessed value of only one comparable property and thus did not meet the legal requirement to adjust the value of the subject to equalize it to other properties under Utah Code Ann. Sec. 59-2-1006.

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.

Clinton Jensen
Administrative Law Judge

Appeal No. 07-0058

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 and 63-46b-13 et. seq.

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