

BEFORE THE UTAH STATE TAX COMMISSION

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| PETITIONER,<br><br>Petitioner,<br><br>vs.<br><br>BOARD OF EQUALIZATION OF WEBER<br>COUNTY, UTAH,<br><br>Respondent. | <b>FINDINGS OF FACT, CONCLUSIONS OF<br/>LAW, AND FINAL DECISION</b><br><br>Appeal No. 07-0101<br><br>Parcel No. Multiple-21<br>Tax Type: Property Tax/Locally Assessed<br>Tax Year: 2006<br><br>Judge: Jensen |
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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 Johnson, Commissioner  
Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner:      PETITIONER REPRESENTATIVE 1  
                          PETITIONER REPRESENTATIVE 2  
                          PETITIONER REPRESENTATIVE 3  
For Respondent:     RESPONDENT REPRESENTATIVE 1, Weber County Assessor's Office  
                          RESPONDENT REPRESENTATIVE 2, Weber County Assessor's Office

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 12, 2008. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. The above-named Petitioner (the “Taxpayer”) is appealing the value of the subject property as determined by the Board of Equalization (“BOE” or “Board”) of Weber County, Utah (the “County”) for purposes of property tax for the lien date January 1, 2006.

2. The subject property consists of 7,946.47 acres<sup>1</sup>, improved with a cabin, located northeast of ( X ) in Weber County, Utah. According to Weber County Board of Equalization records, it is made up of the following parcel numbers:

| Parcel No. | Acres  |
|------------|--------|
| #####-1    | 642.8  |
| #####-2    | 644.12 |
| #####-3    | 283.37 |
| #####-4    | 280    |
| #####-5    | 1920   |
| #####-6    | 520    |
| #####-7    | 568    |
| #####-8    | 50     |
| #####-9    | 300    |
| #####-10   | 400    |
| #####-11   | 160    |

| Parcel No. | Acres  |
|------------|--------|
| #####-12   | 640    |
| #####-13   | 622.5  |
| #####-14   | 160    |
| #####-15   | 160    |
| #####-16   | 92.55  |
| #####-17   | 35     |
| #####-18   | 38     |
| #####-19   | 128    |
| #####-20   | 63     |
| #####-21   | 239.13 |

The County assessor valued the subject property, as of January 1, 2006, at a total of \$\$\$\$\$. Without the cabin, which was assessed at \$\$\$\$\$, the value of the land only is assessed at \$\$\$\$\$ or \$\$\$\$\$ per acre, which is the unit rate assigned to each individual parcel as indicated on the individual assessment records for each parcel.<sup>2</sup> The BOE sustained the original assessment.

3. The Taxpayer requests that the value be reduced to \$\$\$\$\$, which includes a reduction in value for the cabin to \$\$\$\$\$. The County requests that the value set by the Board be increased to \$\$\$\$\$, including a reduction in value to \$\$\$\$\$ for the cabin. Neither party valued the individual parcels nor did they apply different acreage values, with the exception of a zoning differential applied by the assessor. However, the zoning difference was not parcel-specific. The application of uniform acreage rates is consistent with the original assessment,

<sup>1</sup>The Taxpayer gave the size as 7,943.67 acres. Given the insignificant difference, the Commission accepts the acreage from the assessment records.

<sup>2</sup> The subject property is subject to assessment under the Farmland Assessment Act, or “Greenbelt” values. However, neither party raised any issues regarding this matter.

4. The subject property is unimproved except for the cabin. It is in mountainous country and has some areas with steep slopes. There are three means to access the subject. One is from SR-39, is seasonal, and is described as a four-wheel drive road. Another access is through an agreement with a neighboring camp operated by the ( X ). This access is steep. The best access is from STREET. This access leads to the cabin and the more level areas of the subject property.

5. The subject property has approximately 506 acres zoned F-5, which requires a minimum of five acres for the construction of improvements such as a home. The remaining area of approximately 7,440 acres has zoning that requires a 40-acre minimum lot for the construction of improvements such as a home.

6. The Taxpayer provided an appraisal, prepared by PETITIONER REPRESENTATIVE 3. The appraiser concluded that the value of the subject property as of September 29, 2006 was \$\$\$\$\$. The appraiser did not discuss whether the value of the subject would have varied between the statutory lien date of January 1, 2006 and the September 29, 2006 effective date of his appraisal. The appraiser relied on the sales of five comparable properties with sale dates from July 1999 to February 2006. Two of the Taxpayer's comparable properties were in COUNTY 1, one was in COUNTY 2, and two were in COUNTY 3. The smallest was 2,138 acres and the largest was 6,145 acres. The sales prices ranged from \$\$\$\$\$ to \$\$\$\$\$ per acre, with selling dates between July, 1999 and February, 2006.

7. The Taxpayer's appraiser made adjustments to account for differences between the subject property and the comparable properties for factors such as market conditions, location, zoning, and size. After making these adjustments, the Taxpayer's comparable properties had adjusted selling prices between \$\$\$\$\$ and \$\$\$\$\$ per acre. The appraiser reconciled the sales comparables to a final figure of \$\$\$\$\$ per acre, or \$\$\$\$\$. Adding \$\$\$\$\$ for the cabin on the subject property resulted in a total value \$\$\$\$\$ (rounded).

8. The County provided an appraisal, prepared by RESPONDENT REPRESENTATIVE 1. She concluded that the value of the subject property as of January 1, 2006 was \$\$\$\$\$. The county's appraiser relied on the sales of seven comparable properties with sale dates from July 2003 to June 2006. Two of the Taxpayer's comparable properties were in Weber County, one was in Weber and COUNTY 2, two were in COUNTY 2, one was in COUNTY 4 and one was in COUNTY 1. The smallest was 524 acres and the largest was 27,178 acres. The sales prices were between \$\$\$\$\$ and \$\$\$\$\$ per acre.

9. The County's appraiser also made adjustments to account for differences between the subject property and the comparable properties for factors such as market conditions, location, zoning, and size. After making these adjustments, the County's comparable properties had adjusted selling prices between \$\$\$\$\$ and

\$\$\$\$ per acre. The County's appraiser reconciled the sales comparables to a final figure of \$\$\$\$ per acre for the 506 acres with zoning allowing development for five-acre parcels and \$\$\$\$ per acre for the remaining 7,440 acres with zoning allowing development for 40-acre parcels. Making the acreage calculations and adding \$\$\$\$ for the cabin on the subject property made the total value \$\$\$\$ (rounded).

10. Most of the difference between the parties' appraisals can be attributed to the selection of comparable properties. For example, the County's appraiser used a comparable sale of 4,975 acres from June 2006 that was across SR-39 from the subject property. The adjusted per-acre selling price for that sale was \$\$\$\$\$. The Taxpayer's appraiser testified that he considered that sale, but rejected it because he determined that the price may have been inflated by speculation regarding a new road in the area that would greatly improve both access and development potential for the comparable property. The county used a comparable sale that was 524 acres. The Taxpayer's appraiser testified that he considered this comparable property too small to be comparable to the subject.

11. The appraisers also disagreed about adjustments to the comparable properties. Both appraisers relied on a sale of between 4,832 and 4,834<sup>3</sup> acres in COUNTY 2 in August 2004. The unadjusted selling price of this comparable property was \$\$\$\$ per acre. But the Taxpayer's appraiser applied a total 20% downward adjustment to this parcel, explaining that he considered this comparable superior to the subject. At hearing, he further explained that this property was near ( X ), which the County's appraiser considered to be a better location than that of the subject near ( X ). The Taxpayer's appraiser indicated that he had also considered zoning for this comparable. He could not recall the number of acres required for development under COUNTY 2 zoning, but testified that he had determined that the COUNTY 2 zoning on this comparable was at least as good as the subject's zoning. The County's appraiser disagreed with the Taxpayer's adjustments. She determined that most of this comparable required a minimum lot size of 320 acres and was thus inferior to the subject, which allowed for greater density.

#### 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. To prevail in a real property tax dispute, any party requesting a value different from that determined by the board of equalization must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for the value proposed by the party requesting the changed value. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

4. The presumption of correctness for the original valuation does not arise “unless and until available evidence supporting the original property valuation is submitted to the Commission.” *Utah Railway Company, v. Utah State Tax Commission*, P.3d 652 (Utah 2000).

#### DISCUSSION

The Commission considers the evidence in this case in light of the statutory burden of proof on any party requesting a value different from that determined by the board of equalization. Because both parties in this matter request a change from the board of equalization, each has the burden of showing error in the board of equalization value and then providing a sound evidentiary basis to support their proposed value. There are difficulties in each party's evidence in sustaining this burden of proof.

The Taxpayer's appraiser, for example, found that a parcel with zoning allowing for development with lots of at least 320 acres required no adjustment when compared to a property with zoning that allowed for development with lots of at least five and 40 acres. If the County's adjustment of 20% were applied to the Taxpayer's analysis, the adjusted price per acre increases from \$\$\$\$\$ to \$\$\$\$\$.

The County's appraiser requested a value of \$\$\$\$\$ per acre for part of the subject property, but presented no comparable properties with adjusted or unadjusted selling prices above \$\$\$\$\$ per acre. Nor were any parcels of an equivalent zoning presented to support that value. In addition, one of the County's comparables was a 524- acre parcel, zoned F-40, which sold at \$\$\$\$\$ per acre and adjusted to \$\$\$\$\$ per acre. This sale does not appear to be relevant to the analysis of both parties, both of whom considered the total acreage in estimating fair market value. Similarly, the County's comparable number 2 was 27,178 acres, and sold for \$\$\$\$\$ per acre. This parcel is more than three times the size of the subject.

Both parties used the same comparable sale; number three in their appraisals. However, the Taxpayer's appraiser made a negative adjustment of 15% for a superior location in COUNTY 2, while the

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<sup>3</sup> The parties presented slightly different acreage and price per acre figures

County's appraiser considered the location to be equal to the subject. They both used the same comparable number 4 as well. This property sold in February 2006 at \$\$\$\$\$ per acre for 2,138 acres. It is also located in COUNTY 2. The Taxpayer's appraisal ascribed an "A" zoning, while the County's appraisal indicated "[m]ost MU-160 with some F-1(320)." Again, the Taxpayer's appraiser made a negative 15% adjustment for location, while the County's appraiser considered the locations to be equal. The Taxpayer made no adjustment for zoning, while the County made a positive 20% adjustment. As a result of these and other differences, the adjusted prices per acre for the Taxpayer and the County were \$\$\$\$\$ and \$\$\$\$\$ respectively.

Other than the concerns raised above, neither party completely supported its position, nor did each effectively refute the other. In considering the market data, the Commission observes that the relevant, unadjusted sales prices range from \$\$\$\$\$ to \$\$\$\$\$ per acre. The adjusted unit prices range from \$\$\$\$\$ to \$\$\$\$\$. The highest adjusted price per acre for the Taxpayer is \$\$\$\$\$ for comparable number 3, when the County's zoning adjustment is applied. Furthermore, if this same principle is applied to comparable number 4, the adjusted price increases from \$\$\$\$\$ to \$\$\$\$\$. The lowest prices from the County are \$\$\$\$\$ and \$\$\$\$\$.

In summary, the indicated selling price per acre ranges from about \$\$\$\$\$ to \$\$\$\$\$. Given these difficulties, there is not sufficient evidence presented by either party to provide a sound basis for a value different from that set by the board of equalization. The adjusted sales prices support the assessment of \$\$\$\$\$ as a reasonable estimate of fair market value.

With respect to the cabin, although the difference between the assessment and the new appraisal values is miniscule compared with the total assessment, both parties agreed that the value should be lowered. Both parties agreed to a contributory value of \$\$\$\$\$ per sq. ft. The only difference in value is based on the size. The Commission defers to the assessment record, and finds the value of the cabin to be \$\$\$\$\$.

#### CONCLUSIONS OF LAW

1. To prevail in a real property tax dispute, any party requesting a value different from that determined by the board of equalization must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for the value proposed by the party requesting the changed value. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

2. In this matter, neither party sustained the burden of proof necessary to provide a sound evidentiary basis for a land value different from that determined by the Board of Equalization. The parties' evidence,

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for this comparable, but agreed that they were both looking at the same sale.

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taken as a whole, provides comparable sales that support the valuation of the land as determined by the board of equalization. The value of the improvement is to be adjusted according to the County's appraisal

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

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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