

07-0174
Property Tax / Locally Assessed
Signed 07/25/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	ORDER Appeal No. 07-0174 Parcel No. ##### 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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1
 PETITIONER REPRESENTATIVE 2
For Respondent: RESPONDENT REPRESENTATIVE, from the Salt Lake County Assessor's
 Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 19, 2007.

At issue is the fair market value of the subject property as of January 1, 2006. The subject property is 0.63 acres of vacant land located near ADDRESS in CITY, Utah. For the 2006 tax year, the Salt Lake County Board of Equalization ("County BOE") sustained the \$\$\$\$ value at which the property was

assessed. The Petitioner asks the Commission to reduce the subject's value to \$\$\$\$\$, while the County asks the Commission to sustain the value established by the County BOE.

APPLICABLE LAW

Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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”

Any party requesting a value different from the value established by the County BOE 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.

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE to the amount proposed by the party. *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).

DISCUSSION

The subject property is 0.63 acres in size and is a highly irregular-shaped parcel with approximately 75 feet of frontage on STREET 1 between STREET 2 and STREET 3. The current assessed value of \$\$\$\$\$ equates to \$\$\$\$\$ per square foot. The subject property, once owned by a railroad, is narrow and long, and runs diagonally through the block.

Petitioner's Information. As of the January 1, 2006 lien date, the subject property was owned by SELLER, who sold the property to the Petitioner on April 24, 2006. The Petitioning entity is controlled by

PETITIONER REPRESENTATIVE 1, and the subject property is adjacent to a 7.41-acre parcel owned by the PETITIONER REPRESENTATIVE 1 Trust, which is also controlled by PETITIONER REPRESENTATIVE 1. As of the lien date, SELLER not only owned the subject property but also owned some nearby acreage with frontage on STREET 1 that was located near the subject. However, SELLER'S nearby acreage could not have been used in conjunction with the subject for development purposes as of the lien date.

PETITIONER REPRESENTATIVE 1 indicates that he had been in negotiations for several years to purchase the subject property from SELLER. In exchange for the subject property, PETITIONER REPRESENTATIVE 1 paid SELLER \$\$\$\$ and transferred ownerships of two small parcels on STREET 1 to SELLER. On a map of the block showing the subject property, PETITIONER REPRESENTATIVE 1 identified the two parcels he transferred to SELLER as "Lot 24" and "Lot 25," which are adjacent to one another and which appear to have a total of 50 feet of frontage on STREET 1. Prior to the April 2006 transaction, Lot 24 and Lot 25 had separated four lots owned by SELLER, as two of SELLER'S lots abutted the North side of Lot 24 and the other two abutted the South side of Lot 25.

PETITIONER REPRESENTATIVE 1 indicates that Lot 24 is 6,579 square feet in size and that Lot 25 is 6,776 square feet in size, for a total of 13,355 square feet. He states that he retained a utility easement that runs the length of Lot 25 and indicates that development over the easement would be limited. He also estimates that these two lots were worth \$\$\$\$ per square foot at the time he traded them for the subject parcel. At a \$\$\$\$ rate, the 13,355 square feet would have a value of \$\$\$\$\$, which when added to the \$\$\$\$ payment results in a total purported purchase price of \$\$\$\$\$ for the subject. PETITIONER REPRESENTATIVE 1 asks the Commission to reduce the subject's value to this amount for 2006 property tax purposes.

The County contends, however, that the sale between PETITIONER REPRESENTATIVE 1 and SELLER was not an arm's-length transaction because each wanted the other's land to enhance the value of their own land. In addition, there is no evidence to support the \$\$\$\$ per square foot value at which PETITIONER REPRESENTATIVE 1 estimated the values of Lot 24 and Lot 25. RESPONDENT REPRESENTATIVE, the County's appraiser, estimates that the two lots had a value of least \$\$\$\$ per acre, or \$\$\$\$\$, which would result in a purchase price of at least \$\$\$\$\$ for the subject. RESPONDENT REPRESENTATIVE'S estimate of at least \$\$\$\$ per square foot for property with STREET 1 access appears to be supported by the comparables she used in her appraisal. Because there is no evidence of the values of Lot 24 and Lot 25 at the time of the April 2006 transaction and because of RESPONDENT REPRESENTATIVE'S testimony and evidence concerning the value of lots on STREET 1, the Commission is not convinced that the subject's value, as of the lien date, was the \$\$\$\$ value proposed by PETITIONER REPRESENTATIVE 1.

PETITIONER REPRESENTATIVE 1 also made an argument that the subject property should not be valued at a rate above \$\$\$\$ per square foot because that was the rate at which his 7.41-acre lot was assessed for the 2006 tax year. At \$\$\$\$ per square foot, the 0.63-acre subject's value would be \$\$\$\$\$. Generally, a smaller lot, like the subject, is worth more per square foot than a much larger lot. Furthermore, the 7.41-acre, unlike the subject, has no frontage on STREET 1. These factors would suggest that the subject could be worth more than \$\$\$\$ per square foot. However, the Commission recognizes that the 7.41-acre lot has a configuration which allows most, if not all, of its acreage to be developed, while the subject property's unusual configuration would appear to preclude development on most, if not all, of its acreage. Without additional information, however, the Commission is not convinced that the \$\$\$\$ per square foot at which the

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7.41-acre adjacent property was assessed proves that the subject's current value of \$\$\$\$ per square foot is incorrect.

In summary, the Commission is not convinced by the Petitioner's evidence that the \$\$\$\$ value established by the County BOE is incorrect.

County's Information. The County proffers an appraisal in which it concluded that the subject's fair market value was \$\$\$\$ as of the lien date. RESPONDENT REPRESENTATIVE states that the appraisal is proffered to support the County BOE value and not to seek an increase in value.

In determining the \$\$\$\$ value, RESPONDENT REPRESENTATIVE concluded that the highest and best use "of the subject property is the construction of a retail building that would fit on the site and have adequate parking." Although she stated in her appraisal that the subject property had 85 feet of frontage on STREET 1, she determined at the hearing that it only had 75 feet of frontage. Nevertheless, she still believed that the subject could have been developed as of the lien date. PETITIONER REPRESENTATIVE 1 states that development had been considered in the past, prior to his purchasing the parcel, but no building could be built without encroaching on his 7.41-acre parcel.

The County prepared a sales comparison approach to estimate the subject's value, comparing the subject to five parcels of vacant land on or near STREET 1 and one parcel on STREET 4, all of which sold between July 2003 and June 2005. The comparables range greatly in size, from 0.31 acres to 8.01 acres, and sold for prices ranging from \$\$\$\$ to \$\$\$\$ per square foot. The appraiser adjusted the sales to prices ranging from \$\$\$\$ to \$\$\$\$ per square foot. With a median of the six adjusted sales prices, the appraiser estimated the subject's value to be \$\$\$\$ per square foot, which results in a value of approximately \$\$\$\$ for the subject property.

The Commission is not convinced that the \$\$\$\$ value derived by the County is necessarily correct. First, the Commission is not convinced that the property was entirely, or even partially, developable as of the lien date. Second, the appraisal was based on the subject having 85 feet of frontage on STREET 1, not 75 feet, which would undoubtedly have a negative effect on value.

Third, the Commission is not convinced by the County's approach to derive a value for the subject from a "median" of adjusted prices when the actual sales prices and the adjusted sales prices are so disparate. The Commission notes that the six sales seem to "group" into three distinct price ranges, as one comparable sold for \$\$\$\$ per square foot, three comparables sold for prices between \$\$\$\$ and \$\$\$\$ per square foot, and two comparables sold at \$\$\$\$ and \$\$\$\$ per square foot, respectively. Even the adjusted sales prices seem to "group" into two distinct ranges, with one range showing values between \$\$\$\$ and \$\$\$\$ per square foot and the second range between \$\$\$\$ and \$\$\$\$ per square foot. The Commission, however, notes that the three most similar sales on STREET 1 sold in 2004 for prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$ per square foot, respectively, and adjusted to prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$ per square foot, respectively. Because none of the comparables are similar to the subject in most aspects, the Commission is not convinced that the \$\$\$\$ value estimated by the County is correct. Nevertheless, given the actual sales prices and adjusted sales prices of the three most similar comparables on STREET 1, the Commission finds that the \$\$\$\$ per square foot at which the subject is currently assessed appears reasonable.

In summary, none of the information provided by either party convinces the Commission that the subject property's current value, as established by the County BOE, is incorrect.

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DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property, as established by the County BOE, should be sustained at \$\$\$\$ for the 2006 tax year. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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.

DATED this _____ day of _____, 2007.

Kerry R. Chapman
Administrative Law Judge

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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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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