

07-0196
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2006
SIGNED 09-02-08
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON
EXCUSED: P. HENDRICKSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,</p> <p style="text-align: center;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 07-0196</p> <p>Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2006</p> <p>Judge: Phan</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 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 order, specifying the commercial information that the taxpayer wants protected.

Presiding:

D’Arcy Dixon Pignanelli, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP 1, Attorney at Law
PETITIONER REP 2, Attorney at Law, & (X) of the PETITIONER

For Respondent: RESPONDENT REP 1, Deputy Salt Lake District Attorney
RESPONDENT REP 2, Deputy Salt Lake District Attorney

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission pursuant to Utah Code Sec. 59-2-1006, for a Formal Hearing on April 28, 2008. The parties submitted post hearing briefing with Petitioner’s Response to New Argument on June 6, 2008, and Respondent’s Reply to Petitioner’s Response on June 13,

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 property at issue is the taxable portion of Parcel No.#####, located at approximately ADDRESS.

3. For the January 1, 2006 lien date the County Assessor had valued the parcel at \$\$\$\$ and the County Board of Equalization had sustained the value.

4. The entire parcel of property consists of (#) acres of land. However, a portion of the parcel, (#) acres, was considered to be exempt from property tax. It is only the remaining portion of (#) acres that is at issue in this matter. The portion of the parcel at issue is unimproved vacant land which is currently zoned Open Space (OS). It is located adjacent to property developed and used by the PETITIONER . The exempt portion of the parcel, the land that is not at issue in this proceeding, is either part of the (X) or subject to a long-term lease to the (X).

5. The Open Space zoning is very restrictive in regards to how the property may be used and developed. Property zoned OS may be used for the following: cemeteries; pet cemeteries; community and recreation centers; country clubs; golf courses; natural open space; nature preserves/conservation areas, public or private; private recreation facilities; or public parks. It was undisputed that the portion of the property at issue was not large enough for a (WORDS REMOVED). There was some disagreement between the parties as to whether a (WORDS REMOVED) would be allowed. This left a limited number of possible uses based on the zoning restrictions.

6. (PARAGRAPH REMOVED)

7. (PARAGRAPH REMOVED)

8. (PARAGRAPH REMOVED)

9. (PORTION REMOVED)

10. The Commission notes that as of the lien date at issue in this matter, January 1, 2006, there was no reasonable probability of a change in zoning during the tax year 2006.

11. PETITIONER REP 2, President of the PETITIONER, testified at the hearing that PETITIONER had been looking for a lessee for the subject property since 1992. However, as the proceeds from the (X) operations were insufficient to cover expenses on a long-term basis, PETITIONER had determined that they needed a situation where they would receive about \$\$\$\$ per year from the approximately (#) acres at issue. For this reason, rather than accept a low market lease based on the current restrictions, they were waiting to lease the property out long term at a much higher rate after obtaining a new zoning and possibly an act of congress to cancel the reverter clause.

12. Three appraisals were submitted in this matter. The first was prepared by APPRAISER 1, MAI, CRE, and APPRAISER 2, Certified General Appraiser (“LECG Appraisal”), who concluded that the fair market value of the fee simple interest of the portion of the property at issue was \$\$\$\$\$. APPRAISER 1 attended the hearing and testified about the LECG Appraisal conclusion. It was APPRAISER 1’s opinion that because of the zoning and reversionary restrictions on the property, the highest and best use would be to hold the property for eventual development for the (X). He pointed out that the property was too small for a (WORDS REMOVED), that public parks and recreation areas were typically on land owned by the governmental entity so there was not a market to lease the land to a government entity for that purpose. He also indicated that he had called the city about whether a driving range would be allowed and they were unable to give him a definitive answer. He indicated however, that a driving range would not be economically feasible

at the value level indicated by the County. Also, it was his opinion that other private recreational facilities were not economically feasible as private tennis or swim clubs were generally a loss leader to enhance the value of the surrounding residential land. The subject land could be left as open space, but there was no economic component to open space. From this it was his conclusion that the only use that would generate revenue was as a (X).

13. In the LECG Appraisal there was no market sales approach to determine the value. APPRAISER 1 indicated that the property was unique and it was difficult to find comparables. Only one open space land sale was noted in the appraisal, a property of (#) acres of recreational land zoned OS which sold for \$\$\$\$ per acre. APPRAISER 1 stated that this sale indicated a lower value than if the property were held for eventual use as part of the (X).

14. The value conclusion from the LECG appraisal was based on an income approach using an analysis of the sale of the (WORDS REMOVED). (SENTENCE REMOVED). It was the appraisal conclusion that the net present value of the subject land in year 60 was \$\$\$\$\$. Discounted back to the lien date year, it was the appraisal conclusion that as of January 1, 2006, the value of the land was only \$\$\$\$.

15. The second appraisal submitted in this matter had been prepared by APPRAISER 3, Certified General Appraiser and Salt Lake County Employee. It was APPRAISER 3' appraisal conclusion that the fair market value in fee simple ownership of the land at issue was \$\$\$\$\$. This appraisal had been submitted by the Petitioner in this matter, and received over the objection of the County. The County had abandoned this appraisal, submitting one prepared by another appraiser. In his appraisal, APPRAISER 3 prepared a comparable sales approach as well as an income approach from the lease to the school district of a portion of the parcel that was not at issue in this hearing.

16. In his sales approach, APPRAISER 3 considered three vacant land sales that he found

comparable to the subject. One of these sales was zoned Open Space and two were zoned Residential. However, in the appraisal he indicated that even the residentially zoned properties would not be developable for residential due to topography and other restrictions. These three properties had sold for an actual price per square foot of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. From these sales he had concluded the indicated value for the subject property was \$\$\$\$\$ per square foot, which equated to \$\$\$\$\$.

17. In his income approach, APPRAISER 3 considered an income analysis based on the lease rate of the portion of the parcel leased to the (X) in 1993. Both parties pointed out some errors in this analysis and the Commission concludes it is not reliable.

18. The County submitted a review appraisal prepared by APPRAISER 4, MAI. APPRAISER 4's appraisal reviewed the LECG Appraisal submitted in this matter for the completeness of the report, adequacy of the data, appropriateness of the appraisal methods and reasonableness of the conclusion. APPRAISER 4 also offered an alternative opinion of value, of \$\$\$\$\$, which was lower than the value set by the County Board of Equalization of \$\$\$\$\$. In developing his alternative opinion of value, APPRAISER 4 considered both the fair market value of the fee simple absolute and the fair market value in use of the fee simple determinable. However, ultimately he reached the same value conclusion due to the restricted nature of the OS zoning and the type of development allowed under the zoning. It was his conclusion that the reversion would not likely further reduce the value.

19. APPRAISER 4 criticized the LECG Appraisal because it did not consider a sales comparison approach, which, according to APPRAISER 4, is the most direct and reliable method of valuing vacant land. He also criticized the appraisal in that he felt it was not reasonable to say there was no potential use for the subject land for a period of 60 years. He pointed out that the LECG Appraisal's discounted cash flow was 201 years in length, an unusual approach for appraising vacant land, and that at that length even a very small

change would have a big impact on the value conclusion. It was his opinion that more aggressive marketing could shorten the time that the land could be developed into (WORDS REMOVED), or that the land could be used currently for (WORDS REMOVED).

20. In his appraisal, APPRAISER 4 did consider a sales comparison approach with two comparable sales, one unaccepted offer, one sale that had not closed and one long-term lease. These transactions demonstrate the difficulty in finding comparables for the property. Of the two that sold one was a (#) acre parcel located in CITY 2, which had sold for \$\$\$\$ per acre. This parcel had been several residential building lots and was zoned residential, but had been purchased and developed as (PORTION REMOVED). The testimony indicated that the developers of the subdivision had sold this to the developer of the club at a discount from the residential lots in the area, with the idea being that the club would enhance the value of the other residential lots. APPRAISER 4 indicated that the price of \$\$\$\$ per acre represented the use value the land had for (X), not its value as residential lots. He considered the CITY 2 property to be an inferior location, based on a comment from the owner of the property, but without doing a sales comparison study. The other transaction that had resulted in a closed sale was a (#)-acre property located in CITY 3, Utah, which had been purchased for a price of \$\$\$\$ per acre. This property had different zoning from the subject and it was purchased for a commercial development, including a driving range and other activities.

21. One comparable offered by APPRAISER 4 was an OS zoned property similar in size to the subject and the sale was contingent on CITY 1 approving the (X) planned for the property. Interestingly, this appears to be a subsequent sale of the same property used by APPRAISER 3 as Comparable No. 1 in his appraisal. It was the (#)-acre property that had been purchased by COMPANY A in 2005 for \$\$\$\$, as relied on by APPRAISER 3 in his appraisal. COMPANY A entered into a contract to sell this property in February 2006 to a private (X) operator for a price of \$\$\$\$\$, contingent on CITY 1 approving the (X).

However, CITY 1 did not approve the (X), so this sale did not go through. It was the second transaction, the offer and acceptance, which did not close, that APPRAISER 4 considered in his appraisal, while APPRAISER 3 had considered the actual sale in 2005.

22. In his sales comparison, APPRAISER 4 did consider the (X)'s long-term lease of the portion of the parcel that is not subject to this appeal. This portion of the land had been zoned Institutional. It was his conclusion from this transaction that the long-term lease indicated a value for the subject as of the lien date of \$\$\$\$ per acre. After making appraisal adjustments for the differences between these transactions and the subject property, it was APPRAISER 4's conclusion from the sales comparison approach that the value of the subject was \$\$\$\$ per acre, for a total of \$\$\$\$.

23. APPRAISER 4 also considered two income approaches, the first a fee simple absolute from which he concluded that the income value was \$\$\$\$ and the second a value in use of the fee simple determinable, from which he concluded the income value was \$\$\$\$. He placed the most weight on his sales comparison approach value and concluded that the final value was the same for both the fee simple absolute and fee simple determinable values, based on the sales.

24. APPRAISER 1 refuted APPRAISER 4's income approaches and provided information that called into question that sufficient income could be generated from the property by a (WORDS REMOVED) or any other enterprise allowed in the OS zoning that would support the rent level necessary to result in APPRAISER 4's value conclusion.

25. Upon review and weighting of the evidence submitted in this matter, the Commission concludes first that it must consider that this property was zoned Open Space and value it as such, as there was no reasonably probability during the 2006 tax year that the zoning would be changed. Therefore, the Commission gives less weight to the comparables offered in this matter that had different zonings and the

proposed lease transactions of the subject property which were contingent on rezoning.

26. As Open Space, the use of the property is already so restricted that the reversionary clause would not likely further diminish the value. The Commission agrees with APPRAISER 4 on this point. The LECG Appraisal also did not indicate the reversionary clause would affect the value, although the analysis was different from the Jorgenson appraisal.

26. The Commission concludes that even as Open Space zoned land with all the inherent restrictions, there is some use that would generate rent currently, although not likely at the income level Petitioner is holding out to receive from this property, and not likely at an income level that would support the value conclusion of APPRAISER 4. Under the current zoning, and considering the topography and area, this property could have a use as a soccer field, either public or private, possibly a (WORDS REMOVED) and a few acres may have a use as (WORDS REMOVED). Although it might be allowed under the zoning, it is not likely that the subject property would be purchased for use by another (X) operator given the location of PETITIONER and the fact that PETITIONER currently has significant surplus of (X).

27. The Commission disagrees with the assumption made in the LECG Appraisal that the land is to be held for future (X) development remaining unused for a period of sixty years. Because, this assumption is integral to the LECG appraisal, and there is no other basis of value, the Commission disagrees with the appraisal conclusion.

28. The Commission considers the appraisal offered by APPRAISER 4 and concludes that the value conclusion from the appraisal is too high for this property. The rents that could be generated from this property would not support his value conclusion because of the restricted OS Zoning. The Commission considers his land sales approach, and agrees with APPRAISER 4 on the point that generally land sales are the better way to determine a value for vacant land. APPRAISER 4 considers two sales and three other

transactions in the sales approach. The one sale located in CITY 2 was zoned residential, but was purchased for a discounted price for the purpose of developing (WORDS REMOVED). This appears to be a loss leader for the subdivision around it as indicated by APPRAISER 1. This (#) acre property had sold for a price per acre of \$\$\$\$\$. APPRAISER 4 adjusted this property for differences, including a positive 22% location adjustment, a negative 5% size adjustment and a positive 12% market adjustment to conclude that this sale indicated a value for the subject of \$\$\$\$\$ per acre. However, the Commission notes that this tennis and swim club is built on only (#) acres. Additionally, the testimony at the hearing was that the very largest tennis and swim club had been about (#) acres in size. It is the Commission's conclusion from the information regarding (WORDS REMOVED) and this comparable, that the \$\$\$\$\$ per acre value for (WORDS REMOVED) would apply only to the first three or four acres and the rest of the property would be excess land, contributing a much lower per acreage rate to the value.

29. APPRAISER 3 had submitted a comparable sale of OS zoned land that was similar in size to the subject. His Comparable No. 1 was (#) acres in size and had sold for \$\$\$\$\$. This was the only OS zoned comparable similar in size to the subject, which actually sold. This comparable was steep mountainous property and APPRAISER 3 made some adjustments, concluding that this sale would indicate a value for the subject of \$\$\$\$\$ per square foot, or \$\$\$\$\$. APPRAISER 4 considered a subsequent transaction involving this same property one year later. The purchaser in APPRAISER 3' comparable, (X), had entered into a contract to sell it to a private (X) developer, contingent on CITY 1's approval of the (X). As a (X), the contract price had been significantly higher, at \$\$\$\$\$. But this sale did not go through because the city did not approve the (X). The Commission concludes that the original sale of this land for \$\$\$\$\$ as Open Space property is the better indicator of a value and risks inherent in the subject property than any of the other sales offered in this matter, because it is unlikely a private (X) owner would purchase the subject property to develop a

second (X).

30. In considering the evidence, it supports the fact that the value requested by Petitioner is too low and not well supported, but the value requested by the County is too high. Upon consideration, it is the Commission's conclusion that the fair market value of this property, taking into account the highest and best use of the property as limited by the current zoning, but considering the fair market value of the property in fee simple absolute, is \$\$\$\$\$.

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 provide 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. (1) 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

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for the appeal with the county auditor within 30 days after the final action of the county board. (Utah Code Ann. Sec. 59-2-1006(1).)

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). In this matter both parties offered evidence that indicated error on the part of the County's original assessment, as the submitted appraisals indicating lower values.

2. When determining the fair market value of a property, the statute requires the property to be valued pursuant to its current zoning unless there is a reasonable probability that the zoning would change during the tax year at issue. See Utah Code Sec. 59-2-102. The property was zoned Open Space on January 1, 2006 and there was no reasonable probability that the zoning would change during the year.

3. Not only is the consideration of the zoning in the determination of market value required by statute, it is also inherent in an appraisal of fair market value because it is a consideration in the determination of the "highest and best use" of the property. One of the criteria for determining the appraisal "highest and best use" is whether the use is legally permissible, for example if the use that would bring the highest value is a legal use under the current zoning and development ordinances. Petitioner cites to a prior Tax Commission decision for support that the value of the subject property be lowered. However, the Commission notes that in that case, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 06-0812, the Commission's decision to reduce the value from the amount established by the County was due to a finding that the County's value was based on a "highest and best use" for which the legal permissibility was clearly in dispute, as

evidenced by a *lis pendens* and other factors. In the subject case, the fact that it is zoned OS and the restrictive nature of the OS zoning is not in dispute.

4. Respondent is correct in its position that when determining the market value for property tax assessment purposes, the valuation is based on an assumption of fee simple ownership. The County did cite to prior Tax Commission decisions¹ in support of this contention as well as several court decisions from other jurisdictions.² Petitioner did not provide case law or citations that support its contention on this point. The Commission would note, however, in this matter, that the evidence indicated that there was no substantial difference between the fee simple value and fee simple determinable value.

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 \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2008.

Jane Phan
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.

¹ The County cites to *Utah State Tax Commission Appeal No. 04-0457 & Appeal No. 85-1769-1771* et al.
² The County cites to: *Omaha Country Club. v. Douglas County Bd. Of Equalization*, 645 N.W. 2d 821, 831 (Neb. Ct. App. 2002); *Shultz v. TM Florida-Ohio Realty Ltd*, 577 So2d 572, 575 (Fla. 1991); *Caldwell v. Dept. of Revenue*, 596 P.2d 45,47 (Ariz. Ct. App. 1979); *Neptune Tp. in Monmouth County v. Shark River Hills Beach Corp.*, 207 A.2d 330 (N.J. Super. Ct. app. Div. 1965); *Hoover v. State Bd. Of Equalization*, 579 S.W.2d (Ct. App. Tenn. 1979); and *Lake County Bd. Of Review v. Property Tax Appeal Bd.*, 414 N.E.2d 173 (Ill. Ct. App. 1980).

Appeal No. 07-0196

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

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