

07-1428  
LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2007  
SIGNED: 06-02-2008

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  vs.  BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH  Respondent.	<b>INITIAL HEARING DECISION</b>  Appeal No.    07-1428  Parcel No.    ##### Tax Type:    Property Tax / Locally Assessed Tax Year:    2007  Judge:        Hendrickson
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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:**

Pam Hendrickson, Commission Chair  
R. Bruce Johnson, Commissioner

**Appearances:**

For Petitioner:    PETITIONER REP 1  
                          PETITIONER REP 2  
                          PETITIONER REP 3  
For Respondent:    RESPONDENT REP 1  
                          RESPONDNET REP 2, Appraiser

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 May 2, 2008. Petitioners are appealing the assessed value established for the subject property by the RURAL County Board of Equalization. The lien date at issue is January 1, 2007.

APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).

2. 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 Tax Commission. In reviewing the county board's decision, the Commission may admit additional evidence, issue orders that it considers to be just and proper, and make any correction or change in the assessment or order of the county board of equalization. Utah Code Ann. §59-2-1006(3)(c).

3. Petitioner has the burden to establish that the market value of the subject property is other than the value determined by Respondent.

4. To prevail, 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), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

DISCUSSION

The subject property is located at ADDRESS, CITY, Utah. The RURAL County Assessor's office originally set the market value of the subject property at \$\$\$\$\$, and the RURAL County Board of Equalization sustained that value. The property at issue consists of 1.83 acres or 79,175 Sq. Ft. and includes a 7,728 Sq. Ft. truck stop and a vacated convenience market built in 1960. Petitioners purchased the property in 2004 at a tax sale. They paid \$\$\$\$\$ for the property at that time. The current use of the property is as a truck repair stop.

Petitioner submitted documents dating back to 2001 from both the United States Environmental Protection Agency (EPA) and the Utah Department of Environmental Quality indicating that the property had suffered serious environmental contamination. Although some remediation of the contamination has occurred by planting trees around the perimeter of the property to stop the contaminated ground water from spreading to neighboring properties, the letter from the EPA states that "The only way to quickly and conclusively remove the problem of the gasoline contamination under the building would be to demolish the building and excavate and dispose of the contaminated soils". This has not occurred.

Because of the contamination, the County originally refused to provide a business license to Petitioners. A business license has now been issued and Petitioners are running a truck repair business from the location. Petitioners stated that until the contamination is resolved they could not purchase a building permit that requires any evacuation of the soil. They did, however, purchase a building permit to replace the siding on the exterior of the structure with stucco this last year but stated that they would not be able to disturb the land.

Petitioners presented two bid proposals for excavating and replacing contaminated soil. The first bid, by COMPANY A, was signed and dated March 6, 2008, and bid the total cost at \$\$\$\$\$. The second bid, by COMPANY B, was signed and dated Dec. 4, 2007, and bid the total cost at \$\$\$\$\$.

Petitioners expressed concern with what they considered to be erroneous statements made in the prior years Board of Equalization documents. They requested that the 2006 State Tax Commission Initial Hearing Decision be sustained for 2007.

Respondent presented an appraisal prepared by APPRAISER with The Appraisers. RESPONDENT REP 2 explained his appraisal that resulted in a market value of \$\$\$\$\$. He attributed \$\$\$\$\$ to the land and \$\$\$\$\$ to the improvements. His appraisal states that “The EPA has since ‘closed the file’ thus declaring the property clean and clear for business. DERR and DWQ have no issues with the property”.

The appraisal analyzes eight sales all located in CITY. The lots range in size from .99 acre to 5.91 acres with a range in sales price per square foot from \$\$\$\$\$ to \$\$\$\$\$. Two of the sales are “resale” and were considered when making adjustments. His appraisal states that “adjustments made to the sale are supported by the market data and constant with adjustments used in the Land Valuation Guideline developed as part of the 2006 commercial reappraisal for all commercial properties in RURAL County”. There were no adjustments made for the contamination nor was there any mention that the sales used for comparison in the appraisal suffered the same contamination.

Respondent explained that the market value placed on the improvement by the county is considered a “salvage” value of \$\$\$\$\$ but was increased by a 25% factor ordered by the Utah State Tax Commission to \$\$\$\$\$ for the current year.

Concerning the issue of contamination, RESPONDENT REP 2 stated that he had made several calls to a ( X ), Project Manager, Division of Environmental Response and Remediation to discuss the contamination which had not been returned. He acknowledged that he based his decision not to adjust the property on the letter he saw stating that the “file was closed” and that he didn’t know if it was contaminated and he had no way of knowing the cost to cure so he could not make adjustments to the appraisal.

The appraisal refers to an example of contaminated property in COUNTY that he says supports the fact that a tax sale is not a reliable market value indicator and should not be relied upon for market evidence. The appraisal also contained a copy of STATE Department of Revenue Contaminated Property Valuation Guideline.

Respondent's appraiser argues that since the subject property is owner occupied, since they have full use of the property, and have received a building permit to remodel the property, there should be no adjustments. He stated that there does not appear to be any stigma attached to the property since they have been issued a business license and run a business from the property.

In a property tax case, the taxpayer has the burden of showing an error in the Board of Equalization value. Petitioners have met that burden in the documentation from the various parties declaring the contamination in the soil and the water below ground. While some of the issue has been cured, the documents indicate that there is still considerable contamination. The petitioners have also met their burden of quantifying the cost to cure as recommended by the EPA. This estimate of cost to cure far exceeds the value placed on the land by the county or the appraisal for the county.

Under these circumstances, and as the Commission determined in the 2006 appeal of the same property, we believe that the approach approved by the Court of Appeals in *Salt Lake County BOE v. Utah State Tax Commission, ex rel. ( X )*, No. 2005 Ut. App. 360 (2005) is appropriate. See also, *( X )v. Utah State Tax Commission*, 980 P.2d 690 (Utah 1999). In *( X )*, the taxpayer's home was on a Superfund site. The evidence indicated that the cost to cure the contamination exceeded the land value. The taxpayer continued to occupy the home. The Commission upheld the value of the improvement, but reduced the land value to zero. The Court of Appeals affirmed that holding.

Applying that rationale to this case, we hold that the value of the improvements is \$\$\$\$\$, as determined by the Board of Equalization. The cost to clean up the land, however, exceeds its current market value, so, in the absence of any evidence of sales of similarly contaminated land, we find the value of the land to be zero.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2007, is \$\$\$\$\$. The RURAL County Auditor is hereby ordered to adjust its records in accordance with this decision. It is so ordered.

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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 \_\_\_\_\_, 2008.

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Pam Hendrickson  
Commission Chair

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.

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

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