

07-1565
Locally Assessed Property
Signed 02/05/2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

BOARD OF EQUALIZATION OF
WASHINGTON COUNTY, STATE OF UTAH,

Respondent.

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

Appeal No. 07-1565

Parcel No. #####

Tax Type: Property Tax/Locally Assessed

Tax Year: 2007

Judge: Marshall

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:

Marc B. Johnson, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney for Petitioner
PETITIONER, Esq.
For Respondent: RESPONDENT REPRESENTATIVE 1, Attorney for Respondent
RESPONDENT REPRESENTATIVE 2, Appraiser for Washington County
RESPONDENT REPRESENTATIVE 3, Appraiser for Washington County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 15, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer is appealing the assessed value of the subject property located in Washington County, Utah. The County assessed the property at \$\$\$\$\$, which the Board of Equalization sustained. The County asked the Commission to sustain the Board of Equalization value. The Taxpayer is requesting that the subject be reduced to \$\$\$\$\$.

2. The subject property is parcel no. ####, identified as ADDRESS in CITY, Utah. It is a 1.29-acre unimproved parcel. It is located on a private airstrip and backs onto the runway. There is a 120-foot setback from the runway upon which no improvements can be built. Taxpayer submitted as Exhibit P-1 a plat map showing the subject property, neighboring properties, the runway, and setback.
3. The lot is being used as an extra buffer between Taxpayer's home and the runway, but was on record as a separate lot, with its own parcel number as of the lien date.
4. In addition to the subject property, Taxpayer also owns lots 30 and 31. Lot 31 is improved with a residence, and the County has assessed lot 30 at \$\$\$\$\$, because it is "overage" acreage that is being used in conjunction with lot 31.
5. Taxpayer paid a total of \$\$\$\$\$ for all three lots and improvements in 2005. The transaction was part of a 1031 exchange, and the purchase price of each lot was not broken out. Taxpayer offered testimony that \$\$\$\$\$ of the purchase price was allocated to the subject property.
6. Taxpayer testified that the subject property is located in (X) of the development, and that the lots are less desirable. Lots in the (X) were larger, to allow for a larger buffer between the homes and runway.
7. Taxpayer submitted a form in 2006 to combine the parcels. Lots 30 and 31 were combined, but the subject property was left separate. Taxpayer testified it was his intent to combine the three into a single parcel, while the County testified that the form Taxpayer submitted was only to combine the parcels for billing purposes.
8. The Taxpayer stated that he submitted a form in January of 2009 to combine the three parcels.
9. The Taxpayer submitted an appraisal as Exhibit P-2 with an effective date of October 29, 2008. The appraiser determined the subject had a value of \$\$\$\$\$. The appraisal had three comparables that were located outside of the subject subdivision, and three properties in the subject subdivision that were listed for sale in October 2008.
10. RESPONDENT REPRESENTATIVE 3, a licensed appraiser working for the County, testified that property is assessed based on the plat recorded with the County Recorder's Office. She stated that in order for the parcels to be combined for assessment purposes, the lots would have to be resurveyed and a plat amendment filed.

11. RESPONDENT REPRESENTATIVE 3 stated that she looked at the Recorder's Office records the week of the hearing, and that the three lots had not been combined for assessment purposes.
12. RESPONDENT REPRESENTATIVE 3 testified that lot 30, while a separate parcel, was assessed as overage because it was clear that it is used in conjunction with lot 31, which is improved with Taxpayer's home. She stated that there are encroachments and improvements on lot 30 that would have to be removed before the Taxpayer could sell lot 30 as a separate lot, whereas the subject lot has no encroachments, and Taxpayer would not have to take additional steps in order to sell.
13. RESPONDENT REPRESENTATIVE 2, a licensed appraiser working for the County, prepared a retrospective appraisal of the subject property (Exhibit R-2). He performed a visual inspection of the subject, the neighborhood, and a street inspection of the comparables.
14. RESPONDENT REPRESENTATIVE 2 testified that the overall market conditions were relatively stable, and the market was in balance for the year prior to the January 1, 2007 lien date. He testified that there was a minimal decline in the market in 2007.
15. The County's first comparable property is a 1.29 acre lot, located in the SUBDIVISION. It is lot 28, and is adjacent to the subject property. The lot sold for \$\$\$\$ in April of 2006, and the appraiser made no adjustments.
16. The County's second comparable property is a 1.35 acre lot, located in the SUBDIVISION. It is lot 10, and is located approximately one block northwest of the subject property. The lot sold for \$\$\$\$ in April of 2006, and had an adjusted sales price of \$\$\$\$\$. The appraiser made a downward adjustment of \$\$\$\$\$ for an additional buffer zone separating the lot from the runway.
17. The County's third comparable property is a 2.61 acre lot, located in the SUBDIVISION. It is lot 53, and is located approximately one block southwest of the subject property. The lot sold for \$\$\$\$ in January of 2006, and had an adjusted sales price of \$\$\$\$\$. The appraiser made a downward adjustment of \$\$\$\$\$ to account for the excess acreage.
18. The County's fourth comparable is a 1.29 acre lot, located in the SUBDIVISION. It is lot 34, and is located adjacent to the subject property. The lot sold for \$\$\$\$ in May of 2005, and had an adjusted sales price of \$\$\$\$\$. The appraiser made an upward adjustment of

\$\$\$\$\$ for the date of sale.

19. The County submitted an aerial photograph of the subject and neighboring lots as Exhibit R-1. The photograph shows that lots 35, 40, and 41 are all cul-de-sac lots similar to the subject, with the 120 foot setback for the runway, and all have homes built upon them.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.
- (3) No more than one acre of land per residential unit may qualify for the residential exemption.

Utah Code Ann. §59-2-103 (2007).

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“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) (2007).

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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 for the appeal

with the county auditor within 30 days after the final action of the county board.

- (4) 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 values plus or minus 5% from the assessed value of comparable properties.

Utah Code Ann. §59-2-1006 (2007).

CONCLUSIONS OF LAW

Any party requesting a value different from the value established by the County Board of Equalization 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. To prevail, a party must: 1) demonstrate that the value established by the County Board of Equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County V. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000). The Commission finds that the Taxpayer has failed to meet his burden of proof.

Property tax is based on the market value of the property, which is defined under Utah Code Ann. §59-2-102 as the amount for which property would exchange hands between a willing buyer and seller. The seller offered testimony that he intended to combine the subject property with lots 30 and 31. However, the County records reflect that the subject is a separate parcel. The Taxpayer argued that the subject should be valued at \$\$\$\$\$ because that is the assessed value of lot 30. Though lot 30 is a separate parcel, like the subject, the County determined that lot 30 was actually being used as a yard for lot 31. Because it had improvements and encroachments from lot 31, the County valued lot 30 as overage, as a benefit to the Taxpayer. The Commission finds that lot 29 is a separate parcel that is platted and could be sold or developed. The Commission finds that Taxpayer's appraisal is not relevant as it has an effective date nearly 22 months post lien date. Regardless, the appraisal does not support Taxpayer's requested value of \$\$\$\$\$.

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In support of the Board of Equalization value, the County submitted an appraisal with an effective date of January 1, 2007 that determined a value of \$\$\$\$\$. All of the County's comparables were located in the same subdivision as the subject, had similar runway access, and were of a similar size. The Commission finds that the County's appraisal provides evidentiary basis that if the subject property were to have changed 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, as of January 1, 2007, the selling price would have been \$\$\$\$\$.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of parcel no. ##### as of the January 1, 2007 lien date is \$\$\$\$\$. It is so ordered.

DATED this _____ day of _____, 2009.

Jan Marshall
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 _____, 2009.

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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