

08-1011  
CENTRALLY ASSESSED PROPERTY  
SIGNED 03-02-09

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 08-1011</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Centrally Assessed</p> <p>Tax Year: 2008</p> <p>Judge: Marshall</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 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:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP, Representative for Taxpayer  
For Respondent: RESPONDENT REP 1, Assistant Attorney General  
RESPONDENT REP 2, Property Tax Division  
RESPONDENT REP 3, Property Tax Division

STATEMENT OF THE CASE

Taxpayer brings this appeal of the valuation of the subject property by the Property Tax Division. This matter was argued in an Initial Hearing on February 10, 2009 in accordance with Utah Code Ann. §59-1-502.5. The Property Tax Division assessed the subject property at \$\$\$\$ as of the January 1, 2008 lien date. The Division is requesting the Commission reduce the value of the subject property to \$\$\$\$\$. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$\$.

APPLICABLE LAW

The Commission is charged with the assessment of certain property, as set forth in Utah Code Ann. §59-2-201, below in pertinent part:

- (1) By May 1 of each year the following property, unless otherwise exempt under the Utah Constitution or under Part 11, Exemptions, Deferrals, and Abatements, shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter:
  - (e) all mines and mining claims except in chases, as determined by the commission, where the mining claims are used for other than mining purposes, in which case the value of mining claims used for other than mining purposes shall be assessed by the assessor of the county in which the mining claims are located...

Utah Code Ann. §59-2-201 (2008).

Utah Code Ann. §59-2-102(12), defines “fair market value” 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. §59-12-102(12) (2008).

A property owner who objects to an assessment made by the Commission may appeal under Utah Code Ann. §59-2-1007, below in pertinent part:

- (1) (a) If the owner of any property assessed by the commission, or any county upon a showing of reasonable cause, objects to the assessment, the owner or the county may, on or before the later of June 1 or a day within 30 days of the date the notice of assessment is mailed by the commission pursuant to Section 59-2-201, apply to the commission for a hearing....
- (7) At the hearing on application, the commission may increase, lower, or sustain the assessment if:
  - (a) the commission finds an error in the assessment; or

- (b) the commission determines that increasing, lowering, or sustaining the assessment is necessary to equalize the assessment with other similarly assessed property.

Utah Code Ann. §59-2-1007 (2008).

#### DISCUSSION

The subject property is parcel no. #####, located in CITY 1, less than a mile north of Road 1. The subject neighbors CITY 2 and CITY 3. It is a 59-acre unimproved parcel located on the mountainside, consisting of two non-metalliferous mining claims and fee acreage. There is no power or water to the property, and no roadway access.

Taxpayer objected to the increase in value from \$\$\$\$\$ to \$\$\$\$\$ in only one year. The Taxpayer contends that the subject cannot be compared to other property in the area. In support of this, the Taxpayer's representative noted that the property was landlocked, and there has been no change in use. The Taxpayer's representative stated that though there are two mining claims, the property can not be mined due to city ordinances.

Taxpayer submitted a letter from Witness, who owns the property south of the subject that corroborates her claim that there are no roads or utilities that serve the property. Witness's letter also indicates that there is dirt road access via an undeveloped field owned by a third party. In addition, Taxpayer submitted the first page of a letter from ( X ) that indicates that DEVELOPMENT A located to the west of the subject has refused to allow access to ROAD 2, which is located 800 feet from the subject.

Taxpayer's representative stated that they have done extensive research into the development of the subject property. Taxpayer provided the annexation plat, showing the buildable area of the subject. Only 20 of the 59 acres are buildable, due to the topography of the subject lot. Taxpayer also provided a proposed plat map showing the number and placement of lots that would be developed on the subject. The Taxpayer determined that it would not be cost effective to develop the subject, in part due to the cost to secure access to the property. The Taxpayer provided information to the Division that it would cost \$\$\$\$\$ to gain an easement to the property, excluding the expense of making the easement a paved street. The Taxpayer provided a copy of the CITY 1 design standards for streets.

Taxpayer's representative stated that the increase in value presents an undue burden on the Taxpayer, who is on a fixed income. She stated that they are unsure how long it will be before they are able to develop the property, and that it should be treated as agricultural land.

The Division's representative stated that for 2008, COUNTY 1 conducted a countywide re-evaluation of mining properties. The Division conducted an individual appraisal of the subject. The Division rejected the cost approach, as there are no improvements on the subject. The Division rejected the income approach because there was no income generated from the property. The Division relied on the sales approach to value the subject. The Division determined that mining is no longer the highest and best use of the subject. The surrounding areas are being developed for residential and commercial use. The Division plans to turn the assessment of the subject over to the County for future assessments.

In support of its valuation, the Division provided information on four comparable land sales. The Division provided four aerial photographs showing that the topography and access of the comparable properties are similar to the subject.

- a. The first comparable is a 5.04-acre parcel located in COUNTY 1. The MLS data sheet indicates that the terrain is hilly, with a view of the lake, mountain, and valley. The property sold for \$\$\$\$\$, or \$\$\$\$\$ per acre, on September 17, 2007.
- b. The second comparable is a 10.12-acre parcel located at approximately ADDRESS 1 in CITY 3, Utah. The MLS data sheet indicates that the property lies between CITY 3 and DEVELOPMENT 2 in CITY 2. The terrain is hilly and the property has views of the lake and mountains. The property sold for \$\$\$\$\$, or \$\$\$\$\$ per acre, on January 17, 2006.
- c. The third comparable is a 10.12-acre lot located at approximately ADDRESS 2 in CITY 3, Utah. The MLS data sheet indicates that the property is located above CITY 3, and borders DEVELOPMENT 2 and CITY 3. The terrain is hilly and the property has views of the lake and mountains. The property sold for \$\$\$\$\$, or \$\$\$\$\$ per acre, on January 17, 2006.
- d. The fourth comparable is a 40-acre parcel located in CITY 2, in COUNTY 1. The MLS data sheet indicates that the lot has views of COUNTY 1 and part of COUNTY 2. The terrain has a gradual slope and is hilly. The property has views of the lake, mountains, and valley. The property sold for \$\$\$\$\$, or \$\$\$\$\$ per acre, on August 11, 2006.

The Division provided several aerial photographs and maps of the subject property. The first is an overhead view of the subject and the surrounding areas, showing the nearby developments. The second is an aerial topographical map with property boundaries for the subject and neighboring properties. The third is an aerial topographical map of the subject with

the property boundaries, that shows the unimproved roads and jeep trails that provide some access to both the subject and surrounding properties.

The Division also provided a map of the subject and neighboring properties that identify the total land value, and the land value per acre. The lot sizes range from 0.35-acres to 795.87-acres. The values range from \$\$\$\$\$ to \$\$\$\$\$ per acre. The subject is valued at \$\$\$\$\$ per acre, which is on the low-end of the surrounding properties.

It is the Division's position that its original valuation of \$\$\$\$\$ should be reduced by \$\$\$\$\$ to account for the costs to gain legal access to the property. The Division's representative stated that with this reduction, the value of the subject is reduced to \$\$\$\$\$ per acre. He stated that this is less than most of the other properties in the area.

To prevail on a request for a reduction in value, the Taxpayer has the burden of proof and must demonstrate not only an error in the Division's original assessment, but must also provide a sound evidentiary basis for their requested value. *See Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d 332 (Utah 1979). The Commission finds that the Taxpayer's testimony regarding the access problems with the subject property, as well as the Division's acknowledgement of the \$\$\$\$\$ cost to obtain an easement, satisfies a showing that the Division's original assessment was in error. However, the Taxpayer has not provided any information in support of her requested value of \$\$\$\$\$ for the subject property. The Division requested the Commission reduce the value of the subject property to \$\$\$\$\$. In support of this requested value, the Division provided evidence of four comparable sales, as well as maps showing the assessed values of surrounding properties. The Commission finds that the Division has provided an evidentiary basis in support of its requested value of \$\$\$\$\$.

#### DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject property as of the January 1, 2008 lien date is \$\$\$\$\$. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file 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

Appeal No. 08-1011

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

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Jan Marshall  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency 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

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