

08-2396
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2008
SIGNED: 10-12-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER

Petitioner,

vs.

RURAL COUNTY BOARD OF EQUALIZATION

Respondent.

INITIAL HEARING ORDER

Appeal No. 08-2396

Parcel No. ##### - 1, ##### - 2

Tax Type: Property Tax/Locally Assessed

Tax Year: 2008

Judge: M. Johnson

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:

Marc B. Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER REP 1, Representative
PETITIONER, (X)
PETITIONER REP 2, (X)

For Respondent: RESPONDENT REP 1, RURAL County Assessor
RESPONDENT REP 2, Contract Appraiser representing RURAL County

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the RURAL County Board of Equalization ("the County" or "BOE"). This matter was argued in an Initial Hearing on August 29, 2009. For this Appeal, the RURAL County Assessor's Office initially assessed Parcel Nos. ##### - 1 and ##### - 2 at \$\$\$\$ and \$\$\$\$\$, respectively, as of the January 1, 2008 lien date. The Board of Equalization sustained these values. The County is requesting that the Commission also sustain the

values. The Taxpayer requests the values of Parcel Nos. ##### - 1 and ##### - 2 to be reduced to \$\$\$\$\$ and \$\$\$\$\$, respectively. The petition addresses the value of the land only, which was assessed at \$\$\$\$\$ and \$\$\$\$\$ for the respective land parcels.

The county proffered an appraisal report at the time of the hearing. The Taxpayer objected based on the Tax Commission's requirement that evidence be exchanged between parties at least ten days prior to the hearing. As the county representative's only explanation was that he did not have time, the appraisal was not allowed to be submitted. It also appeared that the appraisal addressed fair market value, and the Taxpayer was not questioning total fair market value.

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.

Utah Code Ann. §59-2-103 (2008).

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) (2008).

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 (2008).

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).

DISCUSSION

The subject property includes Parcel Nos. ##### - 1 (“##### - 1 or (X)”) and ##### - 2 (“##### - 2 or (X)”), which are adjacent. ##### - 1 is located at ADDRESS 1, Utah. It is a 1.02-acre parcel improved with a commercial building used as a (X). The land size is (#) sq. ft. and was assessed at \$\$\$\$\$ or \$\$\$\$\$ per sq. ft. ##### - 2 is located at ADDRESS 2 in CITY, Utah. It is a (#) acre parcel improved with a commercial building used as a (X). The land size is (#) sq. ft. and was assessed at \$\$\$\$\$ or \$\$\$\$\$ per sq. ft. Both parcels were assessed with a base land value of \$\$\$\$\$ per sq. ft. and a (%) size adjustment. The subject properties are two of three parcels that are improved with a single building (the “building”).

The Taxpayer is requesting a reduction in the value of the subject property for two reasons: equalization and contamination.

The Taxpayer makes an equalization argument based on land assessments of comparable properties. According to the Taxpayer, the improvements are difficult to compare. Taxpayer explained that ##### - 1 and ##### - 2 are two properties that are treated as a single unit. Although the improvements constitute separate (X) operations, they are part of the same building, which also includes a third enterprise, a (X) located on a separate adjacent parcel. The (X) or “parcel 4,” appears to be owned by an unrelated third party. The Taxpayer also explained that there are few (X) spaces in CITY that have large parking areas such as the subject.

The Taxpayer identified three comparable assessments. The first is a (PROPERTY 1) located (WORDS REMOVED) to the subject property at ADDRESS 3. It is (#) acres or (#) sq. ft. in size, and was assessed at a base land value of \$\$\$\$\$ per sq. ft., with size and frontage adjustments totaling (%) for an adjusted value of \$\$\$\$\$ per sq. ft. The Taxpayer asserts that the (X) should not be assessed at a value lower than the subject because it is a “de facto (X).” Next is a (PROPERTY 2) located at ADDRESS 4. It is (#) acres or (#) sq. ft. in size. The base land assessment is \$\$\$\$\$ per sq. ft., with size and frontage adjustments of (%) for an adjusted land value of \$\$\$\$\$ per sq. ft. The third assessment is a bank located directly across the street from the subject at ADDRESS 5. It is (#) acres or (#) sq. ft. The base land value is \$\$\$\$\$ per sq. ft., with net adjustments totaling (%) for an adjusted sq. ft. value of \$\$\$\$\$. The Taxpayer provided a matrix showing the disparities between the subject property of (%) and (%) for the base land values and a range of (%) to (%) for the adjusted values.

Documents submitted by the Taxpayer, including the one mentioned above, all of which appear to have been generated by the assessor’s office, also identify distinct, discreet “Neighborhoods.” The subject property neighborhood is “(X).” The neighborhood for the (PROPERTY 1) and (PROPERTY 2) is “(X),” and the neighborhood for the (PROPERTY) is “(X).” The Taxpayer argues that the County is using a “line in the sand” rough approximation valuation method that creates unfair outcomes. Also included with the Taxpayer’s submitted documents was a sheet for the (X), which had a base lot value of \$\$\$\$\$ per sq. ft.

At the time of the hearing the Taxpayer had requested the county provide its land valuation guideline, which is a document that establishes procedures and values to be used in the mass appraisal process for land. The county declined to produce the guideline or supporting data. The Taxpayer argues that the County cannot use a land guideline to determine a value for purposes of this hearing because the Taxpayer cannot use it.

The Taxpayer raised a second argument - that there is land contamination that affects the value. The Assessor has applied a 10% discount to the (X) parcel because of soil contamination. The Taxpayer presented a court decision, (COURT DECISION), addressing contamination of property owned by the Taxpayer, including the (X).¹ The Taxpayer explained that the (X) parcel is the only one of the three parcels under the single building, which includes the subject properties, to which County gave the contamination discount. The Taxpayer also argued that the contamination discount should apply to the subject properties as well because the public perceives that these parcels are contaminated, which affects the value.

¹ The property included a (WORDS REMOVED) as well as a (X), which had been demolished. The land under (X) had been subsequently sold. The associated land under the building had subsequently been sold.

The County testified that it valued the subject property based on a land guideline that was prepared by a contract appraisal firm and intended for the Assessor's office. Because the guideline was for a client, the county's representative argued the information was proprietary. The county asserted that the total land value of the subject property is accurate.

The county explained that the contamination was focused diagonally through the property; it starts across the street and enters the block on which the subject property is located through the (X) corner, but is concentrated on the (X). According to the county, because the contamination was concentrated on the (PROPERTY), it was only that parcel that received an adjustment for contamination.

DISCUSSION

Before addressing the two major issues, the Commission recognizes two other arguments raised by the Taxpayer, the first regarding a sales transaction for a parcel of land adjacent to the subject property, and the second suggesting that assessments should take sales tax amounts into consideration. The sale occurred in MONTH, 2007 for \$\$\$\$ per square foot, compared with the \$\$\$\$ per square foot assessment. The county acknowledged the sale, but stated that it was on a STREET, without STREET 2 frontage, and therefore was not relevant to establishing market value for the subject property. Inasmuch as the Taxpayer did not respond to the locational differences, the Commission gives this argument no further consideration. With respect the use of sales tax revenues, the County correctly pointed out that this is not a recognized valuation methodology.

To prevail on an equalization argument, a taxpayer must show that the value of the subject property deviates plus or minus 5% from the assessed value of comparable properties. The evidence presented by the Taxpayer indicates that the subject property deviates in excess of 5% from two other (X) properties and a (X). However, although the Taxpayer argued that the (X) and (WORDS REMOVED) were the most comparable to the subject, the Commission is not persuaded, finding instead that the (PROPERTY) is the most comparable in terms of location and size. The Taxpayer's position, it appears, is based on use more than location. The Commission is not aware of any appraisal principle that is based on use. Rather, land value is determined primarily by location, but is also affected by other characteristics such as zoning size, shape, topography, etc. In other words, land values of two adjacent properties with identical characteristics but completely different uses ((X) and office for example) would have the same value; whereas two properties with identical uses and characteristics, but located even a block apart, may well have different values.

Although the (PROPERTY) is comparable in terms of location, the fact that it is across the street from the subject does not automatically mean that the values are the same. While the Commission questions that properties across the street from one another can have a 19% difference in value between

them, there is no evidence that this is not the case. And, although the county presented absolutely no market evidence in support of its valuation and for the respective properties, the Taxpayer failed to show either that the neighborhoods were improperly established or that the base values within and between those zones were incorrect. Accordingly, the Commission finds that the Taxpayer has not met its burden of proof with respect to the equalization argument.

Taxpayer also argued that it should prevail because the county declined to provide the basis for its assessment. In effect, the Taxpayer stated that the county should not be able to use a land guideline to establish value if the Taxpayer is unable to use it. While the Commission has deep concerns about the county's unwillingness to provide the requested evidence, it is not relevant in this case. Had the Taxpayer provided a stronger equalization argument it might have prevailed. The Commission would not find an argument that a land guideline had been developed and used in an assessment alone to be persuasive, at least sufficiently to overcome its initial burden.

With respect to the contamination issue, the Commission first addresses the (COURT) decision. That proceeding arose from a district court trial, which in turn had been held on remand from a previous (COURT) hearing, originally decided in YEAR. The suit was filed in YEAR, for events that occurred in YEAR or earlier. The decision at issue here remanded the case back to district court; no final conclusion was reached. There was no evidence that contamination on the subject property had been established as a finding of fact (SENTENCES REMOVED). The Commission finds that, because of the time frame and the lack of specificity, the (COURT) opinion is not ultimately dispositive with respect to the amount and specific location of the contamination.

Nevertheless, the county acknowledges that contamination exists on the parcel immediately adjacent to the (X) of the (X). The Commission examined the legal descriptions on the assessor's records. The (X) is the most (X) parcel of the three parcels in question. It is evident from the legal description that a portion of ##### - 1 borders on the southernmost boundary of the block on which the three parcels in question are situated. It is evident that any contamination cannot reach ##### - 3 without crossing ##### - 1. It is also fairly apparent that contamination, even if concentrated on ##### - 3, would come close to, and may even come into contact with, the (X) located on ##### - 2. The Commission is not persuaded the effects of contamination can be determined to the level of detail indicated by the county, nor has the county presented any kind of evidence to establish this precision. Finally, although not dispositive, the Court's ruling clearly shows that contamination was at least a significant issue for the subject property. The Commission, therefore, because of the immediate proximity of the subject property to the (X), finds that a 10% discount should be applied, either for actual contamination or stigma.

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 \$\$\$\$ for the land assessment on Parcel No. ##### - 1. The assessment of \$\$\$\$ for the improvements is sustained; resulting in total assessment of \$\$\$\$\$. The Commission adjusts the land assessment for Parcel No. ##### - 2 to \$\$\$\$\$. The assessment of \$\$\$\$ for the improvements is sustained, resulting in a total assessment of \$\$\$\$\$. It is so ordered. The County Auditor is hereby ordered to adjust its records in accordance with this decision.

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

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

DATED this ____ day of _____, 2009.

Marc B. Johnson
Commissioner

BY ORDER OF THE UTAH STATE TAX COMMISSION:

DATED this ____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

MBJ/08-2396.int