

09-2127
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2008
SIGNED: 04-06-2011
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 09-2127 Parcel No. #####-1 Tax Type: Property Tax/Locally Assessed Tax Year: 2008 Judge: Jensen
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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:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP. 1, for the Taxpayer
 PETITIONER REP. 2, for the Taxpayer
For Respondent: RESPONDENT REP., for Salt Lake County

STATEMENT OF THE CASE

The above-named Petitioner (the “Taxpayer”) brings this appeal from the decision of the Board of Equalization of Salt Lake County (the “County”). The parties presented their case in an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 on January 21, 2010. The

Taxpayer is appealing the market value of the subject property as set by the board of equalization for property tax purposes. The lien date at issue in this matter is January 1, 2008. The County Assessor had set the value of the subject property, as of the lien date, at \$\$\$\$\$. The board of equalization sustained the value. The Taxpayer requests that the value be reduced to \$\$\$\$\$. The County requests that the value set by the board of equalization be sustained.

APPLICABLE LAW

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. (Utah Code Ann. Sec. 59-2-103 (1).)

“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. (Utah Code Ann. 59-2-102(12).)

Utah Code Ann. §59-2-1006(1) provides that “[a]ny 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”

Utah Code Ann. § 59-2-201(1) provides that the Utah State Tax Commission is to centrally assess certain properties:

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 cases, 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;

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 requesting a value that is different from that determined by the county board of equalization must (1) demonstrate that the value established by the county board of equalization contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the county board of equalization to the amount proposed by the party. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 590 P.2d. 332 (Utah 1979).

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. 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 value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1) and 59-2-1004(4).) The evidence required for adjustment on the basis of equalization under Utah Code Ann. Sec. 59-2-1004(4) is a showing that there has been an “intentional and systematic undervaluation” of property that results in “preferential treatment” to the property owners receiving the lower valuations. *Mountain Ranch Estates v. Utah State Tax Comm’n*, 2004 UT 86, ¶ 16.

DISCUSSION

The subject property is parcel no. #####-1, located at ADDRESS AREA. It is part of the PETITIONER and consists of a (#)-acre lot improved with a commercial building. The parcel is made up of (WORDS REMOVED). The property has not been used for (X) for many years. The parties agree that the land is properly assessed locally rather than centrally because the mining claims have been dormant for many years. As the parties did not dispute or otherwise raise the issue of how the subject property should be assessed, the Commission has no basis to find otherwise. The Taxpayer agrees that the County correctly valued the building portion of the subject property at \$\$\$\$ for the 2008 tax year. However, the Taxpayer argued that the land portion of the subject property should be reduced from \$\$\$\$ per acre to \$\$\$\$ per acre to equalize it with other properties in the area.

The Taxpayer has the burden of proof in this matter and must demonstrate not only an error in the valuation set by the board of equalization, but also provide an evidentiary basis to support a new value. In this matter the Taxpayer provided evidence of the valuations of properties in the area of the subject property as follows:

<u>Parcel No.</u>	<u>Property Name</u>	<u>Acreage</u>	<u>2008 Value per Acre</u>
#####-2	PROPERTY 1	125.77	\$\$\$\$
#####-3	PROPERTY 2	10.33	\$\$\$\$
#####-4	PROPERTY 3	17.19	\$\$\$\$
#####-5	PROPERTY 4	20.68	\$\$\$\$

#####-6	PROPERTY 5	20.65	\$\$\$\$
#####-7	PROPERTY 6	18.09	\$\$\$\$
#####-8	PROPERTY 7	9.60	\$\$\$\$
#####-9	PROPERTY 8	19.30	\$\$\$\$
#####-10	PROPERTY 9	3.68	\$\$\$\$
#####-11	PROPERTY 10	13.06	\$\$\$\$
#####-12	PROPERTY 11	6.89	\$\$\$\$
#####-13	PROPERTY 12	18.98	\$\$\$\$

The Taxpayer presented evidence that all of the comparable parcels are patented mining claims that adjoin or are in the area of the subject property. The Taxpayer's representative indicated that the list of parcels provided are all of the parcels on the plat map containing the subject property for which he could read parcel numbers. He explained that partially overlapping claims obscured the parcel numbers on the map, but that he made a good faith effort to gain valuation information for all parcels on the map. The Taxpayer also presented sales comparables, but discussed them in support of its equalization claim rather than as indicators of market value.

The County provided evidence of the sales of five comparable properties with sale dates from July 2001 to February 2008 and per-acre selling prices of \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The County did not dispute the Taxpayer's equalization argument.

Utah Code Ann. Sec. 59-2-1006(1) and 59-2-1004(4) provide that the Commission must equalize a property with 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 value plus or minus 5% from the assessed value of comparable properties. Applying this standard, the Taxpayer raised an equalization issue. More important, the \$\$\$\$\$ per acre valuation is more than 5% above every property identified by the Taxpayer. The County provided no reason for this deviation other than an equalization problem. The comparable sales information presented by the parties did not have the certainty required to show error in the board of equalization value. That issue is moot, however, in light of the equalization problem as demonstrated by the Taxpayer's evidence. See *Kennecott Copper Corp. v. Salt Lake County*, 799 P.2d 1156, 1161 (Utah 1990)(holding that equalization determination prevails over market value). On that basis, there is good cause to reduce the land value of the subject property to \$\$\$\$\$ per acre to equalize it with the values of all other similar properties presented.

Clinton Jensen
Administrative Law Judge

Appeal No. 09-2127

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the land value of the subject property as of January 1, 2008 should be reduced to \$\$\$\$ per acre to equalize it with comparable properties. For the 299.56 acres at issue, the land value for 2008 shall be reduced to \$\$\$\$\$. The improvement value of \$\$\$\$ shall remain unchanged. This will make the total valuation of the subject property \$\$\$\$ for the 2008 tax year. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. 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

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

DATED this ____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner