

11-16  
TAX TYPE: PROPERTY TAX—LOCALLY ASSESSED  
TAX YEAR: 2010  
DATE SIGNED: 6-1-2012  
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: B. JOHNSON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,  Petitioner,  vs.  BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 11-16  Parcel No's. 1 ##### 2 #####  Tax Type: Property Tax/Locally Assessed Tax Year: 2010  Judge: Johnson
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**This Order may contain confidential "commercial information" as defined in Utah Code Ann. § 59-1-404, and is subject to disclosure restrictions as provided therein. Pursuant to Utah Admin. Rule R861-1A-37(6), commercial information obtained from an opposing party may not be disclosed outside of the hearing process unless all parties agree in writing to the disclosure.**

**As provided by Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision in its entirety, unless the taxpayer makes a written request to the Commission within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the request to the address listed near the end of this decision.**

**Presiding:**

Marc Johnson, Commissioner

**Appearances:**

For Petitioner: TAXPAYER, Owner

REPRESENTATIVE FOR TAXPAYER, Appraiser

For Respondent: RESPONDENT, Appraiser, RURAL COUNTY Assessor's Office

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the RURAL COUNTY Board of Equalization ("County"). This matter was argued in an Initial Hearing on June 20, 2011 in accordance with Utah Code Ann. §59-1-502.5. For PARCEL NUMBER- 2 #####, the parties agree that the value should be reduced to \$\$\$\$ from the Board of Equalization assessment of \$\$\$\$\$. For PARCEL NUMBER-1 ##### the RURAL COUNTY Assessor's Office valued the subject property at \$\$\$\$\$, or \$\$\$\$\$ per acre, as of the January 1, 2010 lien date. The Board of Equalization reduced the value to

\$\$\$\$\$, or \$\$\$\$\$ per acre. The Taxpayer is requesting the value of the subject property be reduced to \$\$\$\$\$. The County recommends that the Commission to sustain the assessment set by the Board of Equalization.

#### APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll 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 provided by law.”

UCA §59-2-103(2) provides that “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.” UCA 59-2-102(12) provides that “[f]air 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.”

UCA §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 . . . .”

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 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 is a #####-acre tract of raw land located near CITY-1, Utah, approximately 1/4 mile north. The land is zoned for residential use, R-1/2, which means that one residence can be built on a 1/2 acre lot. There is no road access to the property within 1/4 mile. Both parties agree that the property has no current potential for development. The primary issue in this case is whether there is near-term future development potential, as the County argues, or whether the highest and best use is for agricultural purposes for the foreseeable future, as argued by the Taxpayer. Both parties agreed that there were few relevant sales.

The Taxpayer provided an appraisal that indicated an estimated “as is” fair market value of \$\$\$\$\$. The comparable sales were as follows:

<u>Comp.</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
Location	4.37 mi. NW	7.48 mi. N	7.37 mi. N	5.67 mi. NE	2 mi. W.	4.5 mi. NW
Price	\$\$\$\$\$	\$\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Date	12/06/08	05/15/07	01/03/07	03/19/10	02/26/03	12/07/04
Size	##### ac.	##### ac	##### ac.	##### ac.	##### ac.	##### ac.
\$/acre	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Adj. S.P.	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Adj. \$/ac.	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

From the adjusted sales prices, the appraiser concluded an estimated fair market value of \$\$\$\$\$ or \$\$\$\$\$ per sq. ft. The appraiser also analyzed data from the RURAL COUNTY Multiple Listing Service (“MLS”) for median land sales prices in the CITY-1, CITY-2, and CITY-3. Information from the total RURAL COUNTY area was also included for reference purposes only. From these studies, the appraiser concluded that land values as of the lien date had fallen to 2003-04 levels. The appraiser used two sales from 2003 and 2004, for which no time adjustments were made. The primary adjustments in the appraisal report for all six comparable sales were for water, date of sale, and size.

The report included a detailed market analysis as well as a highest and best use analysis. The market analysis was based on the previously mentioned multiple listing studies. Those studies showed not only the sales prices, but the total number of land sales in the various areas. The reports covered the period from 2000 through 2010. Based on his analysis the appraiser concluded that development potential was limited and that the subject property would not be able to be developed for the foreseeable future. The appraiser also provided a detailed highest and best use analysis in the appraisal report. The analysis was based on the estimated cost to develop lots. The appraiser concluded that the estimated costs, which ranged from \$\$\$\$\$ to \$\$\$\$\$, were too high relative to lot sales for the property to be developed into individual lots.

The Taxpayer addressed the sale of an adjacent property that was also used as a comparable sale by the County. It sold for \$\$\$\$\$ for ##### acres in November, 2005. The Taxpayer testified that the property was intended to be subdivided, but the project was abandoned due to the “onerous requirements for development” made by the city of CITY-1. According to the appraiser, the project was not economically feasible for the city due to the infrastructure costs, or the developer, due to the development costs. Subsequently the property went into foreclosure.

The County provided a number of sales and two listings which bracketed the assessment:

<u>Comp.</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>
Location	CITY-2	Near CITY-3	Near CITY-3	Near CITY-1	Not near a Town	Not near a Town	Adj. to Subject
Price	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Date	4/10	11/09	11/09	4/10	3/10	9/10	11/05
Size	#####	#####	#####	#####	#####	#####	#####
\$/acre	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

In addition, the County provided two listings as of May, 2011. The properties had been annexed into CITY-1. The first listing was \$\$\$\$\$ for ##### acres and the second was \$\$\$\$\$ for ##### acres. Of the sales, the County concluded that no. 4 was the most comparable because it might be annexed into CITY-2, although there were large differences between it and the subject property. The written comments were “dirt road access, possible annex into CITY-2 [sic].” The Taxpayer argued that this property was not comparable for two reasons. First, the comparable sale has most utilities in place, while the subject property has none. Second, the sale was a family sale, transferred though a trust from one family member to another.

The County was allowed to submit a written response to the Taxpayer’s appraisal report after the hearing. The County asserted that largely because of the subject property’s R-1/2 zoning, the highest and best use has changed from developmental to “speculative/future development.” The County argued because most of the Taxpayer’s comparable sales were for agricultural land, they were not pertinent.

As stated, the issue in this matter is one of development potential or highest and best use. Both parties submitted market evidence in support of their positions; the Taxpayer provided an appraisal report, and the county provided comparable sales.

The Taxpayer’s analysis was based on a detailed study of land sales in RURAL COUNTY. The number of sales and median sales prices were reviewed over a 10-year period. The market data was analyzed within the context of the appraiser’s review and conclusion of CITY-1 inability to provide the necessary infrastructure for a large development. The appraiser also provided a detailed highest and best use analysis, from which he concluded that development costs were too high to make any residential development feasible. The appraiser found in his analysis that there was a 10-year over-supply of developed lots and a lack of financing, from which he concluded that raw land along the CORRIDOR has returned to its pre 2004 agricultural use and value.

The County argued the lack of economic feasibility at the present time “does not mean that the highest and best use should automatically revert back to agricultural.” The County pointed out that the fact that the subject property is still under R-1/2 zoning gives the subject property development potential not available to property zoned A-20. The Taxpayer’s appraiser, however, not only recognized the zoning

and potential for annexation into CITY-1, but stated that given all of the factors, the subject property would be seemingly ideal for speculative holding. He had nonetheless determined that development was not financially or politically feasible.

In spite of any potential benefit associated with the current zoning, there is no evidence that it has any impact on use or value. This is buttressed by the fact that the County was unable to provide any sales comparables in the CITY-1 area. Furthermore, the County was unable to show that any of its comparable sales had an R-1/2 zoning, even without establishing the most probable use of those sales in comparison to the subject property. The only market data for land with development potential was located near CITY-3 and CITY-2. The County failed to provide any detailed market or highest and best use analysis to support its assertion or to effectively rebut the Taxpayer's analysis. The only relevant information that the County provided was the two listings in May, 2011 for property annexed into CITY-1. However, these properties were not only within the city, they were considerably smaller, at ##### and ##### acres, than the subject property. The Taxpayer specifically concluded that large development projects were prohibitive. Accordingly, the Commission finds that the highest and best use is for agricultural purposes as of the lien date.

With respect to the Taxpayer's estimate of value, to begin, the appraiser's comparables 5 and 6 are not reliable indicators of market value for the 2010 tax year. Although general price levels may be roughly equivalent between 2003/2005 and 2010, there is no indication, without a paired sales analysis, that any specific property would have the same value for both time periods. Similarly, comparable no's. 2 and 3 were in 2007, which, in spite of time adjustments, are less reliable as indications for a 2010 value. Comparable no. 1 was a year before the lien, but required gross adjustments of about \$\$\$\$\$ compared with a \$\$\$\$\$ sales price. The major adjustments were for size (##### acres, \$\$\$\$\$) and water (##### acres and a well, -\$\$\$\$\$). Comparable no. 4, which was also the County's comparable no. 5, sold for \$\$\$\$\$ with an adjusted price of \$\$\$\$\$. This sale appears to be the most comparable sale for purposes of establishing value. Another agricultural use sale submitted by the County was nine months after the lien date, and is less reliable, although at ##### acres or \$\$\$\$\$ per acre, tends to support the Taxpayer's requested value. The County's other sales are less comparable to the subject property and generally supported a different highest and best use than agricultural. No adjustments were made to any of the County's sales to establish comparability with the subject property.

#### DECISION AND ORDER

Based on the foregoing, the Commission finds the value PARCEL NUMBER-1 ##### was \$\$\$\$\$ and the value of PARCEL NUMBER- 2 ##### was \$\$\$\$\$ as of the January 1, 2010 lien date. The RURAL COUNTY Auditor is hereby ordered to adjust its records accordingly.

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 \_\_\_\_\_, 2012.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner