

12-756
TAX TYPE: PROPERTY
TAX YEAR: 2011
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER Petitioner, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 12-756 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2011 Judge: Phan
---	---

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. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), 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:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE, Certified General Appraiser,
Salt Lake County

STATEMENT OF THE CASE

Petitioner ("Property Owner") brings this appeal from the decision of the Salt Lake County Board of Equalization under Utah Code §59-2-1006. This matter was argued in an Initial Hearing on September 17, 2012 in accordance with Utah Code §59-1-502.5. The Salt Lake County Assessor's Office valued the subject property at \$\$\$\$ as of the January 1, 2011 lien date. The County Board of Equalization ("the County") sustained the value. At the hearing the Property

owner requested a reduction to \$\$\$\$\$. The representative for the County requested that the property remain as set by the County Board of Equalization.

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 provided 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).)

(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 value plus or minus %%% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The subject property is parcel no. ##### and is a vacant, ##### acre, parcel of commercial land located at approximately, (ADDRESS 1), (CITY 1) Utah. It is a flag type lot, so there is access onto (STREET NAME 1), but the buildable portion of the lot is back behind parcels that actually front onto (STREET NAME 1). There are old concrete footings and foundations on this property that will need to be removed before it would be possible to improve this lot. The Property Owner indicated that it is maybe ##### old and that the property owner at that time had started to build a very large industrial or commercial building but the construction appeared to have stopped once the footings were completed. The Property Owner indicated that

when they had first acquired the property they were thinking that the removal would be a cost of \$\$\$\$\$.

Another problem with the subject lot is that it is flag shaped and lacks frontage on any street as well as lacks visibility. In addition the Property Owner indicated that the subject lot is adjacent to undesirable neighbors. There is a large (STRUCTURE) adjacent to the entrance into the subject lot. The subject lot is adjacent to a (REMOVED NAME OF SYSTEM 1). In addition there is sufficient slope on the property that a five or six foot retaining wall would need to be constructed in order to build on the property.

The Property Owner requested a reduction in value to \$\$\$\$\$ which was approximately his purchase price when he acquired the subject property. He had acquired the property on (DATE REMOVED) for a price of \$\$\$\$\$ and additionally he had agreed to pay \$\$\$\$\$ of the back property taxes, for which his portion had been \$\$\$\$\$. He indicated that this was an arm's length transaction that was not a foreclosure or distress situation. He also states the transaction was between a buyer and seller who were knowledgeable and experienced in real estate sales and purchases. The seller had been (COMPANY NAME REMOVED 1), which the Property Owner maintains is actively involved in real estate in the (CITY 1) market and owns numerous (STORE NAME REMOVED 1).

It was the Property Owner's contention that the seller, (COMPANY NAME REMOVED 1), was the lien holder on this property when the owner before (COMPANY NAME REMOVED 1) went bankrupt. (COMPANY NAME REMOVED 1) ended up getting the property released from the bankruptcy proceeding because its note was for more than the property was worth. The Property Owner had been negotiating with (COMPANY NAME REMOVED 1) for this property and his first offer was rejected. He ended up acquiring the property later after additional negotiations. It was the Property Owner's contention that (COMPANY NAME REMOVED 1) did not need to sell this property and could have held onto to it for some period of time if they had thought they would have gotten more money for the property. The Property Owner did provide an email he had received from, President of (COMPANY NAME REMOVED 1), who indicated that (COMPANY NAME REMOVED 1) was not under any pressure to sell the property and it was not a distress sale. Further, (NAME REMOVED) indicated that they had consulted with brokers to get an idea of the value of the property and with all the problems felt that the purchase price was about what the property was worth.

The Property Owner did not provide an appraisal, but did submit an additional comparable of another flag shaped lot. This property was located in (CITY 2), behind a (STORE NAME REMOVED 2) and (STORE NAME REMOVED 3). Like the subject it was zoned commercial and there was little visibility due to the configuration of the lot. This comparable was ##### acres in size and had sold for \$\$\$\$\$ in February 2012. This is a post lien date sale. The information indicated that some fill dirt work would be needed before this property could be developed. This had been a bank owned property and the Property Owner indicated that the bank had listed this property for some time before it sold.

The County did not submit an appraisal of the subject property. The County representative pointed out that (CITY) was far in distance from the subject property and properties there generally sold for less than where the subject was located. It was the County's contention that the subject was located within the (X) corridor. The County did provide some unadjusted comparable sales, two were located within the same block as the subject, but had good street frontage and visibility. These were not flag lots. One sale had been a ##### acre lot on the corner of (COMPARABLE PROPERTY 1). This had sold for \$\$\$\$\$ or \$\$\$\$\$ per square foot. This location was far superior to the subject with visibility and access from two major streets, also this lot was farther from both the (REMOVED NAME OF STRUCTURE) and (REMOVED NAME OF SYSTEM). This property had the same commercial zoning as the subject. The sale had occurred in February 2008, significantly prior to the lien date.

The County's second comparable was also superior to the subject but was very near in location. This was a property at (COMPARABLE PROPERTY 2). This was a ##### acre property zoned for multi-housing units. It went all the way through the block, having frontage and visibility from both (STREET NAME 2) and (STREET NAME 1). This was further from the (STRUCTURE) and (REMOVED NAME OF SYSTEM). It had sold for \$\$\$\$\$, or \$\$\$\$ square foot in April 2010. This property was suitable for multi-housing units.

The County did find one comparable that was also a flag lot. This property was further in location at (COMPARABLE PROPERTY 3) and had sold for \$\$\$\$\$ in February 2010. This was a price of \$\$\$\$\$ per square foot. This comparable was in a manufacturing zoning and was purchased by (COMPANY NAME REMOVED 2).

The County did not put any weight on the Property Owner's purchase price of the subject, arguing that a Notice of Default had been filed against the property in February 2011 and argued that this was a distress sale. The County noted that it had the subject valued at \$\$\$\$\$ per

square foot and the Property Owner's purchase for \$\$\$\$\$ would only have been \$\$\$\$\$ per square foot. The County did not subtract the cost to remove the footings from its value.

After consideration of the information presented by the parties the evidence supports a reduction in value. Neither side submitted an appraisal. The subject property has a number of problems, including the interior location and configuration, lack of visibility and undesirable neighbors as well as the old foundation and footing. The Property Owner purchased this property for \$\$\$\$\$. The Property Owner provided information that this was not a distress sale or a situation where the seller was under duress and had to sell this property. The Property Owner had negotiated with seller for some time and they came to a price. At the time of the purchase the Property Owner realized that he would have some \$\$\$\$\$ in costs in removing the old foundation and footings. The County did provide other comparables, nearby properties that were not similar to the subject or one further in distance from the subject that was also a flag lot. The County did not give any weight to the Property Owner's purchase price.

The Commission does give a purchase price of the subject property some deference as evidence of market value, especially in situations where there was sufficient market exposure and there did not appear to be duress on the either the buyer or the seller. The information presented indicated that this was a sale negotiated between two separate and unrelated entities and although the owner prior to the seller had gone into default and into bankruptcy, the seller was not under duress to sell this property. Property tax is based on the fair market value of the property as of January 1 of the tax year at issue under Utah Code Ann. §59-2-103. Utah Code Ann. §59-2-102 defines "fair market value" as the amount for which property would exchange hands between a willing buyer and seller. A sale negotiated between a willing buyer and seller is evidence of market value. Although there were other comparables provided, with all the differences and no appraisal adjustments made, the best evidence of value is the purchase price of the subject at \$\$\$\$\$. The value should be reduced to that amount.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$ \$, as of the January 1, 2011 lien date. The Salt Lake County Auditor is hereby ordered to adjust its records accordingly. 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner