

09-3782  
LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2009  
SIGNED 08-19-2010  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER 1 &amp; PETITIONER 2 Petitioners,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, UTAH,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 09-3782</p> <p>Parcel No. #####-1</p> <p>Tax Type: Property Tax/Locally Assessed Tax Year: 2009</p> <p>Judge: Dixon Pignanelli</p>
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**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner

**Appearances:**

For Petitioner: PETITIONER 2, Pro Se, by phone

For Respondent: PETITIONER REP. 1, Assessor, RURAL County, by phone  
PETITIONER REP. 2, Appraiser, RURAL County, by phone

STATEMENT OF THE CASE

Petitioner (the "Property Owner") is appealing the assessed value established for the subject property for the lien date January 1, 2009 by the RURAL County Board of Equalization (BOE). The County Assessor set the value of Parcel #####-2 at \$\$\$\$\$. The County BOE reduced the value of the parcel to \$\$\$\$\$.

Pursuant to Utah Code Annotated Sec. 59-1-502.5 an initial hearing was held on April 22, 2010 in the Commission Office in Salt Lake City with the Petitioner and Respondent participating by phone. The Property Owner requested the value of the subject parcel be lowered to \$\$\$\$\$. The representative for Respondent (the "County") requested a value of \$\$\$\$\$.

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 5% 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). See also Utah Code Sec. 59-1-1417 which provides, “In a proceeding before the commission, the burden of proof is on the petitioner . . .”

DISCUSSION

The subject property Parcel #####-1, is a 0.18 acre unimproved lot in CITY, RURAL County, Utah. It is located at ADDRESS 1, CITY Utah. It is LOT A in Phase III of the SUBDIVISION A. The Property Owners’ home is adjacent to the subject lot, but in Phase II of SUBDIVISION A, not Phase III like the subject lot.

The Property Owner said the hearing officer for the RURAL County BOE missed the facts. She asked the Commission to consider what sales are comparable to her neighborhood, whether lots in the same subdivision can have different values based on their location, and to consider her post lien date sales. The Property Owners provided the following points for consideration:

1. The comparable sales (Comps) in the County's Appraisal are not in the same subdivision as the subject lot. The County provided three comparables in SUBDIVISION 3, which is a newer development and 1½ miles away from the subject property. The Property Owner believes the lots in SUBDIVISION 3 are superior to lots in SUBDIVISION A because SUBDIVISION 3 is closer to the Junior High and High School and is a newer subdivision with newer homes and therefore would be more attractive to a buyer. The Property Owner said she built her home in the SUBDIVISION A in 1983 and holds it is a whole different section of CITY.

2. Phase III in SUBDIVISION A in which the subject property is located borders a ( X ). As such, some of the lots back-up against the ( X ), while others across the street back-up against other buildable lots or homes. The Property Owner feels lots abutting the ( X ) would have a higher value because they would have unobstructed views of the mountains.

3. The Property Owner provided information on two land sales in 2009 and two listings, one in 2008 and one in 2009, all of which are in the same subdivision, phase and cul de sac as the subject property. The Property Owner provided an email to her dated September 11, 2009 from the owner of one of the land sales. In the email he writes he owned LOT A and sold it on DATE for \$\$\$\$\$. The email also contains information on the sale of LOT B and says it sold in the last 60 days for \$\$\$\$\$. The Property Owner also provided two listings, one year apart, for a lot that appears to be across and up the street from the subject property. The listing would seem to indicate the property has not sold, but the asking price has dropped. The Property Owner asked that the Commission not to disregard these sales just because they were post lien date sales. She said the sales in 2009 show the market was decreasing and it started decreasing in 2008.

4. The Property asked for a deduction for lack of a driveway curb and stubbed utilities to the property. She said it was "common knowledge" that this would add a value of \$\$\$\$ to a lot and asked that amount be subtracted from the assessed value.

The County provided an appraisal with a value for the subject property of \$\$\$\$\$ as of the January 1, 2009 lien date. The appraisal used three comparable sales of unimproved lots one mile from the subject property in the SUBDIVISION 3 development. Two Comps were 0.20-acre lots that sold in MONTH 2008 and one was a 0.22-acre lot that sold in MONTH 2008. All three sold for \$\$\$\$\$. The County acknowledged none of the Comps were in the SUBDIVISION A Development or specifically the Phase III subdivision where the subject lot is located. The County stated although there are ( # ) lots in the Phase III subdivision (County's Exhibit I) there are only ( # ) vacant lots and none of them sold in 2008. In addition, the County felt the SUBDIVISION 3 subdivision, just one mile away, was a comparable development.

The County disputed the Property Owner's claim there is no driveway curb and provided a photo (Exhibit B) of the subject lot showing curb the length of the lot and bordering the street. In dispute that a lot would sell for less without stubbed utilities the County pointed to the County's Comp 3 (Exhibit H), which sold on DATE for \$\$\$\$ with curb and gutter, but no stubbed utilities.

Addressing the Property Owner's evidence, the County disputed the Property Owners' two listings of the one lot. The County stated a real estate agent told them the lot sold shortly after the January 1, 2009 lien date for \$\$\$\$ and was part of a divorce settlement. The County holds it was not an arms length transaction and for this reason declined to use it in the County's sales ratio study.

The Assessor stated her office does mass appraisal and they need many comparable sales to value lots. Assessor PETITIONER REP. 1 stated although they are asking for \$\$\$\$ she is not opposed to the \$\$\$\$\$. She feels the value of lots is access and location. She is aware the market was softer from MONTH to MONTH 2008, and in the first quarter of 2009 they were seeing it continue to soften some, but did not see significant decreases in values until the last two quarters of 2009.

Disputing the difference between SUBDIVISION 3 and the SUBDIVISION A area, the Assessor said SUBDIVISION 3 is a newer development, but not more exclusive. She said the improvements are modular/manufactured homes and not the quality of improvements built in the SUBDIVISION A.

In seeking a value lower than that established by the County BOE, the Property Owner has the burden of proof and must demonstrate not only an error in the valuation set by the County BOE, but must also provide an evidentiary basis to support a new value. The value set by the County BOE has the presumption of correctness at a Tax Commission Hearing. The Commission now reviews the evidence.

**County's Comparables:** The Property Owner challenged use of comparables from a different development. The County has explained the lack of sales data in 2008 and the need to look at a number of sales for mass appraising. Although SUBDIVISION A is an older development there is no evidence to support SUBDIVISION 3 is a superior location. There may be other factors to consider such as type and quality of homes. The Assessor as an appraiser proffered it is a comparable subdivision. The County's comparable sales are within three months of the January 1, 2009 lien date and are comparable in lot size to the subject property.

**Property Owners' Comparables:** The Property Owner provided sales information on lots within the same subdivision and close to the subject lot. The Property Owner relied on market information from her own subdivision. Because of the sales and listing dates of the Property Owners' information it is inconclusive if the Property Owners' lots are comparable to the County's comparables. Although the lots are relevant in terms of location to the subject lot, the sales and listings are significantly after the lien date of January 1, 2009. The market may have declined by the middle of 2009 to \$\$\$\$\$, but the data is not relevant to the lien date of January 1, 2009. The Commission prefers comparable sales prior to the lien date as it is a better indication of the market and therefore "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)). The Commission notes the county disputed one of the property listings provided by the Property Owner; however the County did not provide any evidence beyond a verbal conversation that the listing had sold and was not an arms length transaction.

**Subject Property characteristics:** The Property Owner stated her lot would sell for less due to the lack of a driveway curb, gutter and stubbed utilities. The County refuted the property did not have street curbing; however the Commission holds the Property Owner was referring to a cut in the curb for a driveway. In terms of stubbed utilities, there is not enough sales evidence to determine if lots with stubbed utilities sell for more. The Commission notes the County provided a comparable sale of a 0.22-acre lot which sold on DATE for \$\$\$\$\$ that did not have stubbed utilities. The Property Owner believes her lot should be valued less than the comparable sales which have more acreage. The comparable sales would indicate lots sell for a lot value, not a per square foot value. A smaller lot that is in a more desirable location may sell for more. Finally, the property owner holds the subject lot would not be worth as much as a lot abutting the ( X ) in the same Phase III subdivision. The Property Owner provided maps and information on two lots that back-up against the ( X ) and one appears to be across the street as is the subject lot. The Property Owner states lots backing a ( X ) would be worth more; however, the information provided was inconclusive.

Reviewing the information presented, the Commission holds the Property Owner has not provided enough evidence to call into question the value of \$\$\$\$\$ set by the BOE for the subject property or an evidentiary basis to support the requested value of \$\$\$\$\$. Although the Assessor requested \$\$\$\$\$, the County was not opposed to the BOE value. There are various reasons not to increase the value of the subject property including no driveway access cut through the street

curb, utilities not stubbed to the property, and a declining market. Both the County and the Property Owner agree the market was softening at the end of 2008 and beginning of 2009. The Commission notes the BOE record shows the BOE supported a 1.75% reduction in the original assessed value of the subject lot due to the softening of the market. The Commission sustains the BOE value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of Parcel No. #####-2 as of January 1, 2009, is \$\$\$\$\$. The County Auditor is hereby ordered to assure its records are 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 must include the Petitioner's name, address, and appeal number and be mailed to the address listed below:

Appeals Division  
Office of the Commission  
Utah State Tax Commission  
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 \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

*DDP/ddp 09-3782.int*