

10-0296
LOCALLY ASSESSED PROPERTY
SIGNED 12-30-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. BOARD OF EQUALIZATION FOR TOOELE COUNTY, STATE OF UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 10-0296 Parcel No. Multiple ¹ Tax Type: Property Tax/Locally Assessed Tax Year: 2009 Judge: Marshall
--	--

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
 PETITIONER SPOUSE, *Pro Se*
For Respondent: RESPONDENT REP. 1, Appraisal Supervisor for Tooele County
 RESPONDENT REP. 2, Tooele County Assessor
 RESPONDENT REP. 3, Tooele County Assessor's Office

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Tooele County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on April 29, 2010. Following are the assessed, Board of Equalization, County's and Taxpayer's requested values:

	Assessed Value	BOE Value	County's Value	Taxpayer's Value
#####-1	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-2	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-3	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
#####-4	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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.

¹ At issue are parcel nos. #####-1, #####-2, #####-3, and #####-4.

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.

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.

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

Parcel No. #####-4

Parcel no. #####-4 is a 0.12-acre parcel that is a backage parcel to the Taxpayers’ home located in CITY. The Taxpayers’ indicated that the property has no water, has limited access, and consists of cliffs and a gully. The County’s representative agrees that the property has limited utility, and the value should be reduced to \$\$\$\$\$.

Parcel No. #####-2

Parcel no. #####-2 is a 0.09-acre vacant parcel located on STREET 1 in CITY, and does not have water associated with it. The Taxpayers argued that this lot is similar to parcel no. #####-5 owned by the NEIGHBORS, in that they are the same size, bordered by STREET 1 and STREET 2, and have an access road bisecting the property. Taxpayers provided photos of the two properties, a plat map of the NEIGHBORS property, and a copy of the NEIGHBORS' Board of Equalization decision that reduced the value of parcel no. #####-5 to \$\$\$\$\$. Taxpayers argue that parcel no. #####-2 should be valued similarly.

The County's representative stated that the NEIGHBORS property has a twenty-five foot wide right-of-way and has no utility. He further pointed out that the Taxpayer's have a (#) feet of frontage because they own neighboring parcels. It is the County's position that parcel no. #####-2 is a buildable lot.

Parcel No. #####-1

Parcel No. #####-1 is a 0.26-acre vacant parcel that is located on STREET 1 in CITY, and does not have water associated with it. Taxpayers stated that the property is bordered by STREET 1 to the north, STREET 2 to the South, and STREET 3 to the West. Neither STREET 2 nor STREET 3 are developed, but remain on the CITY town plat. Taxpayers argued that the undeveloped roads, lack of water, and terrain limit the building potential on the parcel. Taxpayers also indicated that properties located across the street had been assessed at a lower value, and had their values further reduced at the Board of Equalization.

The County's representative stated that there is sufficient acreage to build on the property, and that it currently serves as access to the Taxpayer's home.

Parcel No. #####-3

Parcel No. #####-3 is a 0.17-acre parcel located on STREET 2 in CITY. STREET 2 is a platted, but undeveloped street, and the property is accessed from STREET 1 via other parcels owned by the Taxpayers. The parcel is improved with a two-story home built in 1996. The home has 1,708 square feet above grade, a 1,708 square foot basement, and a basement garage. The Taxpayer has a share of CITY water that is used with this property.

Taxpayers stated the home was constructed between 1994 and 1997, and that in 1998, the property was assessed at \$\$\$\$\$. Taxpayers testified that since the cabin was built, there have been no improvements made to the interior, and only a deck added to the exterior. They argue that with an inflationary rate of 4% per year, a value of \$\$\$\$\$ is supported. Taxpayers further indicate that they are frustrated because the values of two other improved properties were reduced at the Board of Equalization. Taxpayers provided copies of the Board of Equalization decisions

that reduced the improvement values from \$\$\$\$\$ to \$\$\$\$\$ and \$\$\$\$\$ to \$\$\$\$\$. The records provided show that the improvements on these two properties have years built of 1900 and 1895.

The County’s representative provided a photo of the subject property, a sketch of the home, and the calculation of value using the cost approach. It is the County’s position that the Taxpayer’s water share contributes to the overall value of the subject property because it is being used with the property.

The County’s representative explained that CITY had not been reappraised in more than ten years. He stated that though the County tries to reappraise in a five-year cycle, there was not sufficient data available in CITY. He provided copies of a report entitled “CITY 2008 Detailed Review”, which sets the land value guides for CITY. The County also asked the Commission to consider the analysis regarding the value of water shares for the properties that was set forth in the Board of Equalization decisions.

The “CITY 2008 Detailed Review” set the following land guidelines for CITY:

	Buildable	Non-Buildable
Base Size	0 to 0.5 acres	0 to 0.5 acres
Base Value	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot
Overage Value	\$\$\$\$\$/square foot	\$\$\$\$\$/square foot
Water Connection	\$\$\$\$\$	\$\$\$\$\$

The detailed review indicates that the value of a water connection ranges between \$\$\$\$\$ and \$\$\$\$\$. This is based on sales of land sold both with and without a water connection, as well as information from the mayor of CITY, who is also the president of the water company. The land guideline values were determined based on the following sales and listings:

Address	Lot Size	Improved	Water	Sales Date	Sales Price
ADDRESS 1	0.09	Yes	Yes	4/16/99	\$\$\$\$\$
ADDRESS 2	0.09	Yes	No	6/2/04	\$\$\$\$\$
ADDRESS 3	0.81	No	Yes	9/13/05	\$\$\$\$\$
Unknown	0.71	No	Yes	5/17/02	\$\$\$\$\$
ADDRESS 4	0.09	Yes	Yes	4/12/06	\$\$\$\$\$*
				6/24/08	\$\$\$\$\$*
ADDRESS 5	0.25	Yes	Yes	2/20/03	\$\$\$\$\$*
ADDRESS 6	0.29	Yes	Yes	6/17/09	\$\$\$\$\$*
Lots 6,7,8, 9 (partial)	0.27	No	Yes	9/8/09	\$\$\$\$\$**

* Listings, ** Appraisal

Based on the recommendation of the Board of Equalization hearing officer, the County made changes to the land values in CITY. The County’s representative submitted additional information on the changes made to the land values. The County’s revised land values were based on the following recommendation from the Board of Equalization hearing officer:

	Vacant	Improved	Assemblage	Non-Buildable
Base Size	0.09 acres	0.09 acres		
Base Value	\$\$\$\$	\$\$\$\$	\$\$\$\$/square foot	\$\$\$\$
Overage Value	\$\$\$\$/square foot	\$\$\$\$/square foot	\$\$\$\$/square foot	
Water Connection		\$\$\$\$		

In addition to the above guidelines, the county valued assemblage parcels where there were improvements that straddle multiple parcels at \$\$\$\$/\$square foot, and non-buildable lots with limited utility at \$\$\$\$/\$square foot.

In seeking a value other than that established by the Board of Equalization, a party has the burden of proof to demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. Property tax is based on the 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 “market value” as the amount for which property would exchange hands between a willing buyer and seller.

Based on the information provided by the County, an CITY water share has a value of between \$\$\$\$ and \$\$\$\$\$. The Taxpayer offered no evidence to the contrary. The Commission has previously held that a share of water that is freely transferable separately from the property and from which no water is being used for any property, cabin, or other improvement, is an intangible, and its value should not be included in the value of real property.² The testimony provided indicates that ownership of the water share is separate from the land. No one has provided evidence showing to what extent, if at all, ownership of a water share enhances the value of the land. The value of a water share should not be included in the land value. The value of parcel no. #####-3 should be reduced by \$\$\$\$\$, the value of the water share, to \$\$\$\$\$.

Parcel no. #####-4 has limited utility, and the parties agree the value should be reduced to \$\$\$\$\$. Parcel No. #####-2 is bisected by a road, which limits its utility. Taxpayers provided information on a similarly situation parcel (NEIGHBORS property), that was reduced in value to \$\$\$\$\$. The County argued that the NEIGHBORS property had a twenty-five foot right of way and that the Taxpayer’s property had one hundred-fifty feet of frontage because they owned neighboring parcels. Reviewing the map provided by the Taxpayers, it appears that the NEIGHBORS also own two neighboring parcels, and have one hundred-fifty feet of frontage. Absent other evidence, a value of \$\$\$\$\$ appears reasonable for parcel no. #####-2. Taxpayers have not sustained their burden to show that the Board of Equalization value was in error, nor have they provided sufficient evidence supporting a lower value for parcel no. #####-1.

² Tax Commission Appeal No. 97-0544. *See also* Appeal No. 04-0727.

Taxpayers argued the parcel limited building potential, but did not show it was an unbuildable lot if a share of water were obtained. Taxpayer also provided information on two properties that had their values reduced by the Board of Equalization. However, it is unknown why those values were reduced, and Taxpayers did not show that the properties were comparable to the subject. The Board of Equalization values for parcel no. #####-1 should be sustained.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Commission finds that as of January 1, 2009, the value of parcel no. #####-1 was \$\$\$\$; parcel no. #####-2 was \$\$\$\$; parcel no. #####-3 was \$\$\$\$; and parcel no. #####-4 was \$\$\$\$\$. The County Auditor is 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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

JM//10-0296.int