

03-0672
Locally Assessed Property
Signed 02/06/2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
)	
Petitioner,)	Appeal No. 03-0672
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	
SALT LAKE COUNTY,)	Tax Year: 2002
STATE OF UTAH,)	
)	Judge: Phan
Respondent.)	

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE 1, Attorney at Law
 PETITIONER REPRESENTATIVE 2, Attorney at Law
For Respondent: RESPONDENT REPRESENTATIVE, Salt Lake County Appraiser

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 14, 2003, which was reconvened on November 20, 2003. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing both the valuation as set by Respondent for property tax purposes and Respondent's denial of the primary residential exemption for the tax year 2002.
2. The lien date at issue in this matter is January 1, 2002.
3. The subject property is parcel ##### and is located at ADDRESS, CITY 1, Utah.
4. The Salt Lake County Assessor's Office had originally valued the subject property at \$\$\$\$ as of the lien date at issue. The County Board of Equalization sustained the value.

5. In addition to the valuation issue, the Salt Lake County Board of Equalization denied Petitioner's request for a primary residential exemption on the subject property.

6. The subject property is .34 acres that is improved with a cinderblock and wood frame cabin. The cabin is 35 years old. It was built of poor quality of construction. The cabin has 980 square feet above grade and a basement of 702 square feet. Respondent did not consider any portion of the basement to be finished because of the poor condition and quality of the finish work in the basement.

7. Respondent considered the cabin to be fair condition, as of the lien date. From the testimony at the hearing the cabin's condition is somewhere between fair and poor. Petitioner has made some makeshift repairs to stop leaking from the roof, but he testified it needed a new roof, a bid for which was \$\$\$\$\$. In addition the foundation is cracking and settling. The residence is infested with squirrels. Woodpeckers dig holes in the wood exterior. Squirrels get inside the walls from these holes and make their way into the interior of the house.

8. The subject property has an extremely limited water supply. According to Petitioner, he is allowed only 50 gallons per month. Currently the zoning in the area would require 800 gallons per day for a full time residence or 400 gallons per day for a seasonal residence.

9. There is access to the subject property during the summer months by car. However, in the winter the access would be either by snowmobile, snowcat or taking a resort ski lift and skiing down to the property. Petitioner, who claims the subject property is his primary residence, accesses the subject property during the winter months by purchasing a ski lift ticket and skiing to the property.

10. Petitioner claims the subject property is his primary residence. He indicates that he has voted as an CITY 1 resident since 1979. He provided a copy of his voter registration card. His Utah driver's license indicates the address of the subject property as well. Petitioner rents a residence in CITY 2 where he works, but he indicates that he spends much of the summer at the cabin. During the summer he can drive right

Appeal No. 03-0672

to the cabin and he stocks it with water and canned goods for the winter months. He indicates that during the summer he spends the majority of his nonwork time at the cabin, although he will stay over night at his residence in CITY 2 when he needs to be at work early or is involved in a trial. Petitioner does not own any other real property in Utah. After the first major snowstorm, Petitioner can no longer drive to the cabin. Petitioner visits the subject property during the winter about three weekends per month when he skis to the property. He indicates that when his water source dries up during the winter, he melts snow for use. Petitioner is emotionally attached to the property and to CITY 1. He considers it to be his true domicile so he struggles with inconvenience of the property year in and year out.

11. There is no mail delivery to the subject property. Petitioner did not obtain a post office box until after the lien date at the CITY 1. Prior to obtaining a post office his mail was sent to his office in CITY 2, his CITY 2 residence or directly to his accountant.

12. Respondent's representative, RESPONDENT REPRESENTATIVE, Salt Lake County Appraiser, submitted an appraisal that he had prepared. The appraisal indicated that the value of the subject property as of the lien date was \$\$\$\$\$. This is higher than the value sustained by the County Board of Equalization of \$\$\$\$\$. RESPONDENT REPRESENTATIVE stated that his appraisal value was based on market sales while the original assessed value had been based on a cost approach in which RESPONDENT REPRESENTATIVE had placed the cabin at a salvage value. RESPONDENT REPRESENTATIVE indicated that it was not fair to the other property owners in (X) who were all valued based on market sales to leave Petitioner's cabin value at the lower cost basis. In addition, it was RESPONDENT REPRESENTATIVE'S position that if Petitioner was residing in the subject property, then the cabin could not be valued as "salvage."

13. For the sales comparison approach, RESPONDENT REPRESENTATIVE considered the only three sales of properties in the area. These properties were all located within two blocks of the subject property. They had sold for \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. RESPONDENT REPRESENTATIVE noted that all

Appeal No. 03-0672

three properties had better water systems and better access than the subject property. The last property was not very comparable as it was much larger and could be used as a nightly rental for a limited period. The property most similar to the subject property was the first comparable that had sold for \$\$\$\$\$. It had sold fully furnished and with a snowcat for which RESPONDENT REPRESENTATIVE subtracted \$\$\$\$\$. In addition the first comparable had a better water system and RESPONDENT REPRESENTATIVE adjusted \$\$\$\$\$ for the subject's limited water. RESPONDENT REPRESENTATIVE considered this first comparable to be of poor quality and in fair condition which he indicated was equal to the subject property. It was also the same age as the subject property. When RESPONDENT REPRESENTATIVE'S adjustments for the differences between the subject property and the comparable were made, the value indicated for the subject property from this sale was \$\$\$\$\$.

14. RESPONDENT REPRESENTATIVE did not dispute that it would cost \$\$\$\$\$ to repair the roof of the subject property and did not object subtracting that amount from his value.

15. Petitioner argues that the adjustments for water are very subjective and points out that only small adjustment were made for the differences in lot size. Two of the comparable lots were bigger than the subject. Petitioner requests that the value remain as set by the County Board of Equalization.

APPLICABLE LAW

1. 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. "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

Appeal No. 03-0672

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. (Utah Code Ann. 59-2-102(12).)

3. (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. . . (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

4. “Primary residence” means the location where domicile has been established. (Utah Admin. Rule R884-24P-52(B).)

5. Factors or objective evidence determinative of domicile include:
1. whether or not the individual voted in the place he claims to be domiciled;
 2. the length of any continuous residence in the location claimed as domicile;
 3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
 4. the presence of family members in a given location;
 5. the place of residency of the individual’s spouse or the state of any divorce of the individual and his spouse.
 6. the place or residency of the individual’s place of business or sources of income.
 7. the use of local bank facilities or foreign bank institutions;
 8. the location of registration of vehicles, boats, and RV’s.

9. memberships in clubs, churches, and other social organizations;
10. the address used by the individual on such things as: a) telephone listings; b) mail; c) state and federal tax returns; d) listings in official government publications or other correspondence e) driver's license; f) voter registration and g) tax rolls;
11. location of public schools attended by the individual or the individual's dependents;
12. the nature and payment of taxes in other states;
13. declarations of the individual: a) communicated to third parties; b) contained in deeds; c) contained in insurance policies; d) contained in wills; e) contained in letters; f) contained in registers; g) contained in mortgages; and h) contained in leases.

CONCLUSIONS OF LAW

1. The valuation issue is one of a factual determination. When respondent requests an increase in the value above that set by the County Board of Equalization, the increased value does not have the presumption of correctness that applies to the value set by the County Board of Equalization. The evidence presented indicated that the subject property's condition was somewhere between poor and fair and was worse than the condition of the comparables and the condition considered in the appraisal. This supports the value set by the County Board of Equalization.

2. When considering the issue of the primary residential exemption, Utah Admin Rule R884-24P-52 (E) gives a list of items to be considered. One of the items indicates length of continuous residence. Petitioner does not continuously reside at this property. He stays at the property on weekends and much of the summer as is typical of a recreation property. Although Petitioner has claimed to be a resident of the subject property since 1979, is registered to vote at the subject property, and uses the address of the subject property on his drivers license, the Commission concludes it is not his primary residence. When considering the nature

Appeal No. 03-0672

and quality of the living accommodations, the condition of the property and severely limited water tend to indicate that the subject property is not a primary residence. Petitioner owns no other real property in the State, but he does lease a residence that has water, year round access, and other services. The rule discusses addresses for the purposes of mailings. Petitioner did not use the property for his mailing address. Petitioner's business was in CITY 2. This would not be a commutable distance during the winter, which would encompass nearly nine months of the year at that elevation. In weighing the factors, the Commission finds the subject property was not Petitioner's primary residence for 2002.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2002, is \$\$\$\$\$. In addition, the Commission sustains Respondent's denial of the exemption for the subject property. It is so ordered

DATED this _____ day of _____, 2004.

Jane Phan
Administrative Law Judge

Appeal No. 03-0672

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2004.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

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