

04-1264
Locally Assessed Property Tax
Signed 07/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 04-1264
v.)	
)	Parcel No. #####
BOARD OF EQUALIZATION)	Tax Type: Property Tax/Locally Assessed
OF SAN JUAN COUNTY,)	Tax Year: 2004
STATE OF UTAH,)	
)	Judge: Chapman
Respondent.)	

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. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, 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:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, San Juan County Assessor
 RESPONDENT REPRESENTATIVE 2, San Juan County Assessor's
 Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. 59-1-502.5, on March 1, 2005, at which time the parties proffered

much of their evidence and testimony. The hearing was continued to and additional evidence and testimony was proffered on June 22, 2005.

Three issues exist in this appeal: 1) the fair market value of the subject property as of January 1, 2004; 2) whether the subject's 2004 assessed value requires equalization to another property; and 3) whether the property is entitled to the 45% primary residential exemption. The subject property is 4.8 acres of land in a remote part of San Juan County that is improved with a 67 year-old home. Although the home is not the primary residence of any individual, the Petitioner maintains the property so that family members may stay in the house whenever they visit the property. Although the Petitioner claims that the foundation is crumbling, there is no evidence of the cost to cure this reputed defect or how it affects the value of the property. For the 2004 tax year, the subject was assessed at \$\$\$\$\$ (\$\$\$\$\$ for the house, \$\$\$\$\$ for the first acre of land, and \$\$\$\$\$ or the remaining 3.85 acres).

APPLICABLE LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. Utah Code Ann. §59-1-210(7).

2. 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 Tax Commission. In reviewing the county board's decision, the Commission may admit additional evidence, issue orders that it

considers to be just and proper, and make any correction or change in the assessment or order of the county board of equalization. Utah Code Ann. §59-2-1006(3)(c).

3. Petitioner has the burden to establish that the market value of the subject property is other than the value determined by Respondent.

4. To prevail, 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), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

5. UCA §59-2-1006(4) provides that “. . . 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.”

DISCUSSION

The Petitioner is concerned that the amount of 2004 property taxes assessed on the subject property was approximately four times the amount of taxes assessed in 2003. Utah law, however, does not provide for a cap on the increase in taxes from year to year. Unless the Petitioner provides evidence that the subject property's assessed value is either greater than its fair market value, in which case a reduction in value is appropriate, or that the assessed value of comparable

properties is more than 5% higher or lesser than that of the subject's, in which case equalization of values is appropriate, the Commission must sustain the County's value. In addition, the primary residential tax exemption is only available for property used for residential purposes as a "primary residence," i.e., the residence where a person's domicile has been established. See UCA §59-2-103, -102(29), Utah Admin. Rule R884-24P-52.

Fair Market Value. The Petitioner argues that the subject's 2004 assessed value should be reduced to that value at which it was assessed in 2003. The subject's assessed value for a prior year is not proof, however, that that value was the fair market value that existed in that prior year, much less the current year in question. Accordingly, the Petitioner has proffered no evidence so show that the property's fair market value is different from that value at which it was assessed.

The Respondent has proffered a number of unadjusted comparable sales in San Juan County, the majority located in the cities of CITY 1 and CITY 2. The comparables in the cities sold for prices between \$\$\$\$\$ and \$\$\$\$\$. The one comparable located outside of city boundaries, the (X) property (Exhibit R-2), sold for \$\$\$\$\$ and is approximately 15 miles outside of CITY 1 on a (X) in the region. The subject, however, is neither in a city nor located on a major artery, but is located many miles away from a major road artery. The comparables all sold for values as high as the subject's assessed value. However, this evidence does not show whether the market for properties as remote as the subject property is the same as the market for properties in cities and on major roads. Without such information, the Commission is not convinced that the same market exists for the subject property as exists for homes in cities and on major arteries. For these reasons,

the Commission finds that the information proffered at the Initial Hearing neither shows the subject's assessed value to be correct nor shows it to be incorrect.

Equalization. Section 59-2-1006(4) provides that the Commission shall equalize a property's assessed value for property tax purposes if a taxpayer meets two conditions: (1) raise the issue of equalization; and (2) show that the assessed value deviates plus or minus 5% from the assessed value of comparable properties. The Petitioner raises the issue of equalization at the Initial Hearing and meets the first condition.

In an attempt to meet the second condition, the Petitioner proffers one comparable property that is located within 1/8th mile of the subject. While the assessor appears to have assessed the lot and additional acreage of the subject and the Petitioner's comparable in a similar manner, there is a large difference in the value for the house on each property. Specifically, the house on the subject property is assessed at \$\$\$\$\$, while the house on the comparable property is assessed at \$\$\$\$\$.

The Petitioner claims that the homes are similar because they are nearly the same age, were built by the same builder, and have been maintained in a similar condition. The Petitioner does admit, however, that the subject property is larger than the house on his comparable property. The relatively small difference in size, if it were the only difference that existed, would probably not explain why the subject property's house is assessed at a value more than 13 times that at which the comparable's house is assessed.

However, the County contends that the condition of the subject property's house

is far superior to that of the house on the comparable property. Pictures of the two houses (in Exhibit R-1) show that the subject house has some newer windows and that it is larger than the house on the comparable property. Furthermore, the Petitioner has testified that he maintains the house on the subject property in an adequate condition for family members to regularly visit and stay in the house. Testimony concerning the comparable's house suggests that it has a different utility than the subject's house. Where there more pictures of the houses to compare and additional testimony concerning the livability of the comparable property, including what utility hook-ups, etc. were available, perhaps the Commission could better determine if the houses were actually comparable or not. However, based on the evidence proffered at the Initial Hearing, the Commission does not find that the houses on the two properties have been shown to be similar enough to be considered comparable. Accordingly, the Commission does not find that an equalization of the assessed values of the two properties is warranted.

Furthermore, the Petitioner proffered only one comparable to show an inequity of assessments. In *Mountain Ranch Estates v. Utah State Tax Commission*, 2004 UT 86, 100 P.3d 1206 (2004), the Utah Supreme Court found that a property owner who is unable to provide more than one disparately valued comparable property is not entitled to equalization relief under Section 59-2-1006(4).

Residential Exemption. The residential exemption is available only to those residential properties that are used as a "primary residence;" i.e., where a person maintains his or her domicile. The Petitioner stated that the subject property is not the primary residence of any

person, but that his family members occasionally visit the property and stay in the house on such visits. Under these circumstances, the house is not the domicile of any person and is a “secondary residential property” that does not qualify for the primary residential exemption.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the subject property does not qualify for the primary residential exemption. Furthermore, the Commission finds that the Petitioner’s evidence is insufficient to show that the subject’s fair market value of \$\$\$\$\$ is incorrect or that equalization of values is warranted. Accordingly, the Commission denies the Petitioner’s appeal and sustains the County BOE’s decision regarding this property for the 2004 tax year. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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.

Appeal No. 04-1264

DATED this _____ day of _____, 2005.

Kerry R. Chapman
Administrative Law Judge

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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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