

04-1359
Locally Assessed Property Tax
Signed 04/19/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-1359
	)	Parcel No.	#####
v.)		
	)	Tax Type:	Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)		
IRON COUNTY,	)	Tax Year:	2004
UTAH,)		
	)	Judge:	DePaulis
Respondent.)		

Presiding:

Palmer DePaulis, Commissioner
Marc B. Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER, Property Owner
For Respondent: RESPONDENT REPRESENTATIVE, Iron County Assessor

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 April 7, 2005. The issue in this proceeding is the fair market value of the subject property as of January 1, 2004. The subject property is a residential lot of two and one half acres with a house trailer located near CITY, Utah. The Iron County Assessor had assessed the property and the trailer for \$\$\$\$\$, which was sustained by the Iron County Board of Equalization. The Taxpayer, PETITIONER, is requesting a reduction in value of approximately \$\$\$\$\$ because a drainage ditch that was not properly located within its easement cuts off a portion of his lot. The Assessor recommends that the assessment be sustained.

APPLICABLE LAW

Petitioner has the burden to establish that the market value of the subject property is other than that as determined by Respondent. Utah Admin. R. R861-1A-7(G). 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 Taxpayer maintains that the prior owner of the property received a \$\$\$\$\$ discount for the drainage ditch crossing the back part of the property. He notes that there is about half an acre that is cut off from his use. He cannot cross the ditch or go around it. He claims that other owners have complained that the ditch is not properly within the easement and that their complaints have caused the county to relocate the ditch. He says that since he does not have much money or an attorney, the county has not responded to his requests.

The County Assessor, RESPONDENT REPRESENTATIVE, says that the subject property is in the SUBDIVISION and that he has no basic disagreements with many of the points that the taxpayer presented. He asserts, however, that he has already given the Taxpayer a reduction for the misaligned drainage ditch. The County Assessor says that using a comparable sales approach he has determined that sales in the subdivision for a two and one half acre lot not affected by the drainage ditch were approximately \$\$\$\$\$. For those properties that were affected by the ditch, including PETITIONER'S property, the assessor placed a value of \$\$\$\$\$.

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In short, the assessor has taken \$\$\$\$\$ off of the market value. He made this adjustment on those properties affected by the ditch by placing a value of \$\$\$\$\$ on the first acre and a \$\$\$\$\$ acre balance on the remaining property for a total value of \$\$\$\$\$. He says that he treated all similar affected properties the same. He also showed evidence that he had taken the same approach in tax years 2002 and 2003. The difference between those properties affected by the ditch from those that were not was about \$\$\$\$\$. Thus, the \$\$\$\$\$ represented the discount or reduction for the impact of the drainage ditch.

It appears that PETITIONER does not believe an adjustment was made because the adjustment was not spelled out. The assessor apparently accounted for the ditch by adding a lower backage rate of \$\$\$\$\$ onto the basic 1-acre lot value of \$\$\$\$\$, rather than deducting \$\$\$\$\$ from a basic lot value of \$\$\$\$\$. However, the result is the same. The Commission is therefore persuaded that the Taxpayer has received a reduction for the impact of the drainage ditch.

The Commission also notes its observation, which was stated in the hearing, that because the neighboring property owner has put up a fence on the other side of the drainage ditch, and allowed cattle to graze on PETITIONER'S property, PETITIONER is at risk of adverse possession.

DECISION AND ORDER

On the evidence and testimony presented, the Commission finds that the fair market value of the subject property is \$\$\$\$\$ as of January 1, 2004.

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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.

DATED this _____ day of _____, 2005.

Palmer DePaulis, Commissioner

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

Marc B. Johnson
Commissioner

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