

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 provide 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(11).)

- (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).

The presumption of correctness for the original valuation does not arise unless and until available evidence supporting the original property valuation is submitted to the Commission. *Utah Railway Company, v. Utah State Tax Commission*, P.3d 652 (Utah 2000).

DISCUSSION

Petitioner is appealing the market value of the subject property as set by Respondent for property tax purposes. The lien date at issue in this matter is January 1, 2004. The subject property is 70.56 acres with a small abandoned sales office on it. It is parcel no.#####, located at ADDRESS, Kane County, Utah. The Kane County Assessor had originally set the value of the subject property, as of the lien date at \$\$\$\$\$ and the County Board of Equalization (“BOE”) reduced the value to \$\$\$\$\$. On the Appeal form, Petitioner requested that the value be reduced further to \$\$\$\$\$.

At the hearing Petitioner argued that the property values had significantly increased from the prior tax year and the increase was beyond a reasonable amount. Petitioner then presented information on a 40 acre parcel that is a few miles south of the subject. It was assessed for about \$\$\$\$\$ an acre. She asserted that this parcel is a better comparable than the Respondent’s comparables that were located in the (X) area, which had better amenities such as water, roads, and utilities. Finally, she argued that property adjacent to (X) was assessed for approximately \$\$\$\$\$ an acre and had access to more services. The subject property did not have the same benefits. Petitioner then stated that the sales office, located on the subject property was originally built for approximately \$\$\$\$\$ and was used only during the period that the other lots were sold. The (X) has not been used for the last fifteen years and cannot be sold unless the zoning is changed and the property is subdivided. Even though it is in need of extensive repairs and the cost to move it is prohibitive, the Petitioner feels that she could accept its original cost of \$\$\$\$\$ as a value.

The Respondent, however, argues that the values should be raised back to the original assessments of \$\$\$\$\$ for the sales office and its one-acre site, and \$\$\$\$\$ for the remaining 69,56 acres, for a total assessment of \$\$\$\$\$. The remaining acreage would be valued

at \$\$\$\$ an acre. The overall value per acre of the total land would \$\$\$\$\$, including the (X) site at \$\$\$\$\$, which was adjusted to \$\$\$\$\$ by the Board. The Respondent argues that the (X) adds value to the property and can be used if the utilities are hooked back up and some maintenance performed. The Respondent also provides several sales in the (X) area and one sale in the (X), which show a range of \$\$\$\$\$ to \$\$\$\$\$ per acre to corroborate the original assessed value.

Commissioners Johnson and DePaulis arranged to tour the subject property with both the respondent and Petitioner. During that tour it was noted that this parcel is rather unique because it provides the entry vista to the valley as it straddles the (X). The property tends to be more level at the road level but soon gives way to steeper grades as it moves away from the road and up to a higher plateau to the west. The former (X) is near the road but somewhat elevated so that the views of the valley can be seen. The (X) is abandoned and needs repair but could be made serviceable again.

The Petitioner's case that the property is more like the isolated graze land is not particularly persuasive because the subject property is in the heart of the valley and development has already taken place to east of it. Petitioner's comparison of the subject to the property near (X) is also not persuasive because it is clear that that the Assessor's comparables generally show a range of \$\$\$\$\$ to \$\$\$\$\$ an acre for property in the vicinity of (X) versus property in the (X) area that ranges from \$\$\$\$\$ to \$\$\$\$\$ an acre. Clearly, the recreational property in the wooded areas is selling for more per acre. The former sales office may not add much value to the property ultimately, but it is equally possible that a motivated buyer could rehabilitate the structure and make it into a small cabin. The Commission finds that Petitioner has not made a case for establishing a lower value.

Respondent presents several sales in the (X) area and a sale in (X). These sales show a range of value of \$\$\$\$ at the low end and a \$\$\$\$ at the higher end. The Respondent argues that these recreational properties are similar. As part of the tour it was noted that the (X) and (X) properties are much further along in their development and have more access to utilities. The (X) area actually functions as a town and the argument that these properties are similar without adjusting for amenities is not very persuasive. Respondent's argument that the comparable sales support the original assessments as compared to the BOE adjustments is not persuasive. All that those sales do is demonstrate a range of values for land that is superior to the subject property. It does not establish any value at all for the subject property directly. Since no adjustments were made, the Commission is unable to determine whether the BOE adjusted value or the original assessment was more accurate. The Commission finds, therefore, that in the absence of evidence to the contrary the value adopted by the Board of Equalization represents the fair market value of the property.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the decision of the BOE and finds that the value of the subject property as of January 1, 2004 is \$\$\$\$.

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

Appeal No. 04-1501

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 agency 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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