

05-0776
Locally Assessed Property Tax
Signed 11/22/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	INITIAL HEARING ORDER
)	
Petitioner,)	Appeal No. 05-0776
)	Parcel No. #####
v.)	
)	Tax Type: Property Tax/Locally Assessed
BOARD OF EQUALIZATION OF)	
SALT LAKE COUNTY,)	Tax Year: 2004
UTAH,)	
)	Judge: Phan
Respondent.)	

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
 PETITIONER 2

For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization regarding the assessed value of the subject property for tax year 2004. This matter was argued in an Initial Hearing on November 2, 2004.

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).)

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).)

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

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 parcel no.#####, located at ADDRESS, CITY 1, Utah. The Salt Lake County Board of Equalization had originally set the value of the subject property, as of the lien date at \$\$\$\$ and the County Board of Equalization sustained the value. At the hearing Petitioners requested that value be reduced to \$\$\$\$\$. Respondent requested that the value remain as set by the County Board of Equalization, although Respondent submitted an appraisal that supported a higher value.

The subject property consists of a .18-acre lot improved with two-story, Tudor style residence. The residence is 77 years old and was considered to be average condition by the County Appraiser. The residence has 1,698 square feet above grade and 849 square feet in the basement which is 95% finished. The subject is located in a desirable, high demand neighborhood commonly referred to as the (X) area. The subject property backs into the open space around (X).

Petitioners have the burden of proof in this matter and must provide evidence that would support a lower value. At the hearing Petitioners describe problems with the residence but do not provide bids for repair or other evidence that could support an actual dollar amount for an adjustment. Secondly, they argue that location of the property on the creek did not enhance its value. Thirdly, Petitioners presented land values as assigned by the county for properties in the subject neighborhood, surrounding neighborhoods and CITY 2, arguing that the land value placed on the property was too high in comparisons. Additionally, as a side note at the hearing, Petitioners did mention one sale that had occurred in their immediate neighborhood. However, they failed to provide verification or even an address for the sale.

Petitioners describe several problems with the residence, some of which may impact value and some that were just typical of homes of that age. Petitioners state there is a large crack in the wall around the fireplace in the master bedroom. It has been there for years and Petitioners have not obtained a bid or brought in an expert to see if there is a serious structural issue. Some cracking would be typical in a home this age in average condition. Should Petitioners at some point consult with an expert on this, find it is a significant structural problem and obtain a bid for repair, an adjustment may be warranted. Petitioners indicated they have continuous issues with water seepage into the basement. They have attempted to correct the problem but have been unsuccessful. This would be an issue that would, depending on the severity of the problem impact the value negatively, but when the appraiser for Respondent visited the property they did not tell him about this issue and again there is not sufficient information to determine an adjustment. Petitioners indicate that the trees that line the street are diseased and will need to be removed within a few years. This is a neighborhood problem, not one limited specifically to Petitioners residence, if this starts to negatively impact the values this will be evidenced in the sale prices of homes in the area, which in turn should affect the assessed

values. The County's assessment is based on the sale prices of properties in the neighborhood. Petitioners indicate that the driveway needs to be replaced and the garage is not usable. The appraiser for Respondent appropriately considered both factors in his appraisal. Also they indicate their home does not have any of the original leaded windows that they felt added charm and were present in some of Respondent's comparables. However, the windows were new, double pain windows.

Petitioners argue that the location adjacent to the creek does not add value to the subject. They indicated that the subject property backs onto a canyon and (X), which is open space to with public access. They indicate that the area is a nuisance and devalues the property because of criminal activity the takes place there, as well as noise and parties that occur there late into the night. However, the have no evidence that there would be a public perception that living adjacent to the open space and creek would not be a positive factor. The neighborhood area is generally considered a desirable area and the demand is high for properties there. From the sales presented the properties abutting the creek are selling at a higher rate than those in the same neighborhood. So although this is a nuisance for Petitioners, there is no evidence that it is negatively impacting the market at this time.

Petitioners also presented a comparison of the portion of the assessed values of properties that the county attributed to the land in the area of the subject property and other areas. The Commission notes that taxes are based on the total value (land plus improvements) and the total value is determined in Petitioner's area by sales, which are for both land and improvement. Assessed values are not determined in Petitioner's area by lot sales plus the cost to build the residence. Therefore, the Commission does not find the portion of the total value attributed to the land to be relevant. The inquiry before the Commission is the market value for the entire property. Additionally, the Commission only compares values to those in the same area.

Petitioners argue their land value is too high based on a price per square foot of that portion of the assessed value attributed to land, compared to the portion of the assessed value attributed to the land on STREET 1 and STREET 2. Petitioners fail to take into account the appraisal principle of the diminishing returns. Generally, the bigger the residential lot size the lower the price per square foot, because the function of the lot is to have a building site for the residence. Once you have the site additional land will add value but at a lesser rate. A residential lot on STREET 1 would generally sell for more in total, but would be at least an acre in size. In Petitioner's neighborhood the size of a residential lot is less than a fifth of an acre, not much larger than what is needed for the home site.

Respondent submitted an appraisal in this matter prepared by RESPONDENT REPRESENTATIVE. He considered three sales that were all reasonably similar to the subject property as far as location age, size and style. The comparables had sold for \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$. He had made a 9% adjustment up for the fact that the property abutted the creek. He argued that the creek was an amenity, like living next to a park, and would increase the value. The adjustment was based on studies of sales in the area that indicate properties abutting the creek sold for more than properties in the same neighborhood that did not abut the creek. The appraisal value for the subject property was \$\$\$\$\$. However, he indicated he was supporting the county assessed value at \$\$\$\$\$. It appears that he took into account problems that were apparent from inspection or pointed out to him by Petitioners.

In weighing the evidence presented and considering the burden of proof in this matter, Petitioners have not provided a sound evidentiary basis to support a new lower value and certainly has not supported their requested value of \$\$\$\$\$. They do argue strenuously about the 9% adjustment for the location next to the creek because they find it to be a nuisance. The appraiser considered it to be an amenity. Like the trees this is not a factor limited to Petitioners'

property but would affect all the homes on their side of street up to the point of the developed park. If sale prices of these properties start to decline this should be reflected in the market values and assessed values should be reduced. Otherwise the assumption that it is an amenity is reasonable and based on the sale studies presented.

Considering the problems Petitioners described about their property, the County's appraiser visited the property. He accounted for some of the issues and determined others would not need an adjustment like the driveway. Apparently Petitioners did not tell the appraiser about water seepage in the basement or the crack around the fireplace but a cost has not been quantified. The Commission would note that the appraisal value is higher than the value Respondent is requesting for this property so these factors may be adequately taken into account.

Petitioners stated during the hearing that there had been a property three houses down that sold for \$\$\$\$\$, but they did not have an address or any document to support the sale. This sale could be considered if Petitioners are able to provide evidence verifying the sale price, that the sale was an arms length sale, that the seller was not under duress, and that it was exposed to the market sufficiently to be a market sale, in addition to information necessary for comparison that includes size, age, quality and condition. Petitioners, however, did not have any of this information. The Commission would note that this information is generally sufficiently evidenced by submitting the full Multiple Listing Service printout of the sale. A "for sale by owner property" is harder to verify.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2004, is \$\$\$\$\$. 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 _____, 2005.

Jane Phan
Administrative Law Judge

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

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner