

06-0897
Property Tax/Locally Assessed
Signed 03/05/2007

BEFORE THE UTAH STATE TAX COMMISSION

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| PETITIONER, |) | ORDER |
| |) | |
| Petitioner, |) | Appeal No. 06-0897 |
| |) | Parcel No. ##### |
| v. |) | |
| |) | Tax Type: Property Tax/Locally Assessed |
| BOARD OF EQUALIZATION |) | |
| OF SALT LAKE COUNTY, |) | Tax Year: 2005 |
| STATE OF UTAH, |) | |
| |) | Judge: Jensen |
| Respondent. |) | |

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, from the Salt Lake County Assessor's Office

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the Salt Lake County Board of Equalization. This matter was argued in an Initial Hearing in accordance with the provisions of Utah Code Ann. §59-1-502.5, on December 12, 2006.

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, 2005. The subject property is parcel no. #####, located at ADDRESS 1 in CITY, Utah. The County Assessor had set the value of the subject property, as of the lien date at \$\$\$\$\$. The County Board of Equalization lowered the value to \$\$\$\$\$. Petitioner requests that the value be reduced to \$\$\$\$\$. Respondent requests that the value set by the County Board of Equalization be increased to \$\$\$\$\$.

The subject property consists of a .24-acre lot. As of January 1, 2005, the property had footings and foundations for a dwelling. This construction required building permits and approvals. Through the construction approval process, the Petitioner determined that improvement of the subject property required a holding tank for sewage. Other properties in the area have septic systems, but the subject property was too near CREEK to meet requirements for a septic system. Emptying the holding tank requires hiring a tanker truck and pumping arrangement and thus represents an additional cost that will run with the subject property for as long as the dwelling is occupied. The parties presented opposing testimony as to whether the holding tank cost would have an effect on the market value of properties in the area.

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, a party requesting a change in the value as set by the County Board of Equalization must (1) demonstrate that the Board of Equalization assessment contained error, and (2) provide the Commission with a sound evidentiary basis for

reducing the original valuation to the amount proposed by party requesting the change in value. *See Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

Petitioner has the burden of proof in requesting a value lower than that set by the Board of Equalization and must demonstrate an error in the valuation set by the County Board of Equalization and provide an evidentiary basis to support a new value. In this matter Petitioner provided evidence regarding the cost of the subject property itself and three additional comparable sales. The Petitioner testified that the County Board of Equalization lowered the January 1, 2004 value of the subject to \$\$\$\$\$ to match the purchase price of the subject property in late 2003. The Petitioner argued that this price, plus additional value for improvements and appreciation, should set the value for the subject property in 2005. In addition to this evidence of value, the Petitioner presented three comparable sales. Petitioner's first comparable was an August 23, 2006 sale of a .70-acre parcel at ADDRESS 2 for a sale price of \$\$\$\$\$. The Petitioner indicated that, like the subject property, this property would require disposal of sewer through a holding tank and regular trucking of waste.

The Petitioner's second comparable was an October 6, 2003 sale of a .52-acre parcel at ADDRESS 3 for \$\$\$\$\$. Like the subject, this parcel would require a holding tank. The MLS listing indicated "Terrain, Flat, Terrain, Mtn." The parties agreed that this indicated a mix of some area with a low enough slope to allow building of an improvement with the rest of the lot having a steep slope. This assessment is corroborated by mention in the MLS of an "old funky cabin" on the site.

The Petitioner presented a third comparable sale at ADDRESS 4. This was a .59-acre parcel that sold on March 1, 2006 for \$\$\$\$\$. This parcel had a septic field approved. The MLS listing showed a "recorded plot plan available" and indicated that city water was available.

The MLS also indicated that the sale included water shares. The parties did not present evidence regarding the value that should be placed on water shares. The Petitioner argued that the third comparable both sets a maximum value for the subject property and shows that properties with septic systems sell for two to three times the value of properties that require holding tanks. The Petitioner prepared a cost estimate of the cost to truck waste from the site. The cost estimate, at current costs, was \$\$\$\$\$ per year for a family of two and \$\$\$\$\$ per year for a family of four. Because these were trucking costs, the Petitioner expected them to rise commensurate with the cost of diesel fuel.

The Respondent's representative criticized the Petitioner's comparable sales. The Respondent's representative indicated that he had determined that the Petitioner's first comparable had too steep a slope and was too near CREEK to allow for building. The Petitioner's second comparable property sold to a neighbor for expansion of the neighbor's home. The Respondent's representative testified that there "may be a soils issue" with this property. As to Petitioner's third comparable property, Respondent's representative indicated that the property had a gas line right of way that may prevent building.

Respondent bears the burden of proof with regard to showing any value in excess of the Board of Equalization value of \$\$\$\$\$. The respondent provided an appraisal, prepared by RESPONDENT REPRESENTATIVE. It was the appraiser's conclusion that the value for the subject property as of the lien date at issue was \$\$\$\$\$. The appraiser relied on the sales of three comparable properties with selling dates in February 2001, March 2001, and February 2006 with selling prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$. The \$\$\$\$\$ and \$\$\$\$\$ sales in 2001 were in CANYON 1, while the \$\$\$\$\$ sale was in CANYON 2. The Petitioner criticized the county's comparable sales because none of them required trucking of waste. The appraiser made no adjustment for septic system availability with each of the Respondent's comparables. The

appraiser testified that he did not find a difference in value for properties with or without septic system availability but did not provide evidence to support this contention. The Respondent did not challenge Petitioner's cost estimates in this regard. The Petitioner also testified that the CANYON 2 location, while not far from the subject, was an exclusive community that bore little resemblance to the main CANYON 1 area.

Weighing the evidence presented, the Commission finds the Petitioner's comparables to be better estimates of value than those presented by the Respondent. The Respondent provided no evidence other than appraiser's opinion to challenge the assertion that an annual waste disposal cost of \$\$\$\$ to \$\$\$\$ running with a parcel would lessen the value of that parcel to prospective buyers. There is enough evidence of slope issue with the Petitioner's first comparable property to preclude reliance on it. But there is only speculation regarding a soils issue on the Petitioner's second comparable and a possible gas line easement for the Petitioner's third comparable. The Commission will not allow speculation to rule out consideration of otherwise valid comparable sales. The Commission thus accepts the Petitioner's second comparable, with a sales price of \$\$\$\$\$, and the Petitioner's third comparable, with a sales price of \$\$\$\$\$. The Petitioner's first comparable is inferior to the subject because this comparable does not have the current building permit and building approvals that are in place for the subject. The Petitioner's third comparable is superior to the subject because this comparable has an approved septic field while the subject requires a holding tank. The value of the subject property is thus between these two values. Weighing all considerations, the Commission finds the value of the subject parcel to be \$\$\$\$\$ as of January 1, 2005. This is \$\$\$\$\$ more than the 2003 purchase price of the subject parcel before its improvements.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2005 is \$\$\$\$\$. The Salt Lake County Auditor is ordered to adjust its records in accordance with this decision. 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 _____, 2007.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

Clinton Jensen
Administrative Law Judge

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

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson

D'Arcy Dixon Pignanelli

Appeal No. 06-0897

Commissioner

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Commissioner