

08-0669
Locally Assessed Property
Signed 10/09/2008

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, STATE OF UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 08-0669</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2007</p> <p>Judge: Marshall</p>
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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:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Esq.
PETITIONER REPRESENTATIVE 2

For Respondent: RESPONDENT REPRESENTATIVE, Appraiser for Salt Lake
County

STATEMENT OF THE CASE

Taxpayer brings this appeal from the decision of the Salt Lake County Board of Equalization ("the County"). This matter was argued in an Initial Hearing on September 10, 2008. Taxpayer is appealing the value of the subject property as established by the County. The lien date at issue in this matter is January 1, 2007.

APPLICABLE LAW

Utah Code Ann. §59-2-103 provides for the assessment of property, as follows:

- (1) All tangible taxable property located within the state 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 provided by law.
- (2) Subject to Subsections (3) and (4), beginning on January 1, 1995, the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2.
- (3) No more than one acre of land per residential unit may qualify for the residential exemption.

Utah Code Ann. §59-2-103 (2007).

For property tax purposes, “fair market value” is defined in Utah Code Ann. §59-2-102(12), as follows:

“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. For purposes of taxation, “fair market value” shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

Utah Code Ann. §59-12-102(12) (2007).

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part below:

- (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 values plus or minus 5% from the assessed value of comparable properties.

Utah Code Ann. §59-2-1006 (2007).

Any party requesting a value different from the value established by the County Board of Equalization has the burden to establish that the market value of the subject property is other than the value determined by the County Board of Equalization. To prevail, a party must: 1) demonstrate that the value established by the County Board of Equalization contains error; and 2) provide the Commission with a sound evidentiary basis for changing the value established by the County Board of Equalization to the amount proposed by the party. The Commission relies in part on *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979); *Beaver County V. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996) and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

DISCUSSION

The subject property is parcel no. #####, located at ADDRESS in (X) near the top of CANYON. It is a .58 acre parcel improved with an older cabin with significant deferred maintenance. The County Assessor's Office valued the property at \$\$\$\$ for the January 1, 2007 lien date. The Board of Equalization sustained that value. The County is requesting that the value be reduced to \$\$\$\$ based on an appraisal by RESPONDENT REPRESENTATIVE. The Taxpayer is requesting that the value of the subject property be reduced to \$\$\$\$.

The Taxpayer's representative provided information on the cabin located on the subject property. He stated that it is 100 years old and is rotting out. The cabin is unusable in the winter, and is rarely used any other time of year. The Taxpayer believes the cabin is a negative. The Taxpayer's representative stated that the value of the subject should be for raw land with the cost of removal of the cabin. He stated that the parcel is in the Foothill Canyon Overlay Zone ("FCOZ"), which makes it difficult to build in the canyon.

The Taxpayer owns four parcels in the area. The parcels neighboring the subject are unimproved and Taxpayer's representative stated they were valued at approximately \$\$\$\$\$. He believes the value of the subject should be consistent with the surrounding properties.

The County's representative stated that the cabin on the subject property has significant deferred maintenance such that the improvement itself contributes little value to the parcel. Rather, the County's representative argued, the value of the improvement is gained by it being in

place and the owner being able to obtain a permit to remodel the property, thereby reducing the cost and time to obtain the necessary permits to build a new structure.

The County submitted an appraisal using three comparable properties. The Appraiser made an adjustment of \$\$\$\$ for the time and expense of obtaining the necessary permits for new construction, and an adjustment of \$\$\$\$ for sewer access. Upon questioning, the County's representative stated that he contacted planning and zoning, to arrive at the \$\$\$\$ adjustment, which he believes is a conservative estimate taking into consideration hard costs, not the time involved to obtain the permits. The first comparable is .34 acres, it sold for \$\$\$\$ in September of 2006 and has an adjusted sales price of \$\$\$\$\$. The second comparable is .26 acres, it sold for \$\$\$\$ in June of 2006 and has an adjusted sales price of \$\$\$\$\$. The third comparable property is .69 acres, it sold for \$\$\$\$ in August of 2007 and has an adjusted sales price of \$\$\$\$\$.

The Taxpayer has effectively made two arguments. The first is that the County's valuation of the subject property is incorrect. The second argument is an equalization argument, that the subject property is valued higher than neighboring properties.

In seeking a value lower than that established by the board of equalization, the Taxpayer has the burden of proof and must demonstrate not only an error in the valuation set by the County Board of Equalization, but also provide an evidentiary basis to support a new value. The Taxpayer provided some discussion on the condition of the cabin, and proposed that the value of the land should be reduced by the cost of removing the cabin. However, he failed to provide any testimony, documents, or information on the estimated cost to remove the cabin from the property. The Taxpayer provided testimony that the neighboring parcels he owns were valued at around \$\$\$\$\$. However, there was no evidence offered that would suggest that these properties are similar in size, have the same access, or have water rights like the subject. The Commission finds that the Taxpayer has not met his burden of proof to show that there was an error in the value established by the Board of Equalization.

The County presented an appraisal using three comparable sales located within a half mile of the subject. The County's representative provided information on the costs and time involved in obtaining permits for new construction versus obtaining a remodel building permit. The County's representative made adjustments to the property to take into account the expense of getting the necessary building permits as well as whether a property could connect to the public sewer. The County's appraiser determined the value of the subject property as of the January 1, 2007 lien date to be \$\$\$\$\$. The County's representative asked the Commission to reduce the Board of Equalization's value. The Commission finds that the County has presented a sound

evidentiary basis that if the subject property were to have changed 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, as of January 1, 2007, the selling price would have been \$\$\$\$\$.

To prevail on an equalization theory, a taxpayer must first raise an equalization argument and then show that the value of the subject property deviates plus or minus 5% from the assessed value of comparable properties. The Taxpayer raised an equalization argument, by stating the subject property was valued significantly higher than neighboring parcels. The Taxpayer provided testimony that he owns four neighboring parcels; the subject, and the three adjacent unimproved parcels. He argued that the adjacent parcels are valued at approximately \$\$\$\$\$, and the subject should also be valued in that range. However, the Taxpayer did not provide any information that would suggest that the neighboring parcels are “comparable” to the subject, only that they are adjacent. It is unknown if the other parcels owned by the Taxpayer have street access, water rights, or are similar in size. The Commission finds that the Taxpayer’s unimproved parcels are not comparable with the subject, particularly when there are other properties in the area that have older cabins in disrepair on them. The Commission has already found that the subject’s fair market value is \$\$\$\$\$. Given this finding, the fact that other properties have a lower fair market value does not demonstrate an inequity in assessment without a showing that the other properties’ values are below fair market value. No information provided by the Taxpayer demonstrates that the other properties are valued below their respective fair market values.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds that the value of the subject property as of the January 1, 2007 lien date is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order. 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 _____, 2008.

Jan Marshall
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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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