

08-0711
LOCALLY ASSESSED PROPERTY
SIGNED: 04-2709

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1 & PETITIONER 2, Petitioners, vs. BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 08-0711 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2007</p> <p>Judge: Phan</p>
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Presiding:

Pam Hendrickson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
For Respondent: Gerald Seamons, Appraiser, Salt Lake County

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 29, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (the "Property Owner") is appealing the assessed value of the subject property for the lien date January 1, 2007.
2. For the lien date the County Assessor had valued the property at \$\$\$\$ and the County Board of Equalization (the "County") had sustained the value. The Property Owner requests that the value be lowered to \$\$\$\$\$. At the hearing the County's representative asked that the County's value be sustained.
3. The property at issue is Parcel No. ##### and is located at ADDRESS A, in Salt Lake County, Utah.
4. The property is a .50 of an acre lot located in SUBDIVISION A in CANYON. There are no structures on the lot. The lot has easy year round access from ROAD 1 and has frontage on ROAD 2. It is

located about one mile from (X). It is a nice lot that would be developable for residential use except that it is a dry lot and has no water. As a dry lot, the Property Owner could not build any improvement on the property and not even use the property for overnight camping.

5. The Property Owner acknowledges that if he had a water share for the property, it would meet the other requirements necessary to build a residence of the ZONE.

6. As of the lien date, the only water source for properties in SUBDIVISION A was the private COMPANY A. COMPANY A has issued (X) water shares in SUBDIVISION A. COMPANY A passed a resolution years ago not to issue additional shares. The subdivision has (X) lots, which means there will always be about (X) dry lots.

7. If available and not previously attached to an improvement, water shares may be purchased separately from lots in SUBDIVISION A. Both parties were aware of the sale of one water share for \$\$\$\$\$ several years ago. Neither party had information on more recent sales of water shares. The Property Owner testified that if he could find a share to purchase for \$\$\$\$\$ he would do so, but none are available at that price. He indicated that there are lots in SUBDIVISION A that have water and are not developable for other reasons like topography. These owners might at some point sell their water share, but the Property Owner testified that it is difficult to talk anyone into selling. He indicates that there was one lot with a watershare for sale for \$\$\$\$\$. It was his position that this lot was not developable because the lot was on a stream and was too small to meet the ZONE setback requirements. He indicates he would have purchased this lot for \$\$\$\$\$ just to obtain the watershare, but the seller would not accept less than the \$\$\$\$\$.

8. The Property Owner submitted a letter from PERSON A, President of COMPANY A, dated September 22, 2008. In the letter PERSON A states, "According to our records, there is no water share associated with lot ##### owned by PETITIONER 1." As the County did not challenge the lot number, the Commission assumes the letter refers to the subject property at issue in this hearing.

9. The Property Owner requested that the subject lot be valued at \$\$\$\$\$. He did not present any comparable sales of similar lots in SUBDIVISION A. He did present a letter from PERSON B, a realtor, who sells properties in the canyon. PERSON B mentioned some dry lot sales, which he indicated generally sold for \$\$\$\$\$ or less. The sales were in SUBDIVISION B or other inferior locations and could have been smaller and not developable for reasons in addition to lack of water. The Property Owner acknowledged that these other dry lots were inferior to his property, which was why he was requesting a value of \$\$\$\$\$.

10. The County submitted an appraisal that had been prepared by RESPONDENT REP, Certified General Appraiser, Salt Lake County. It was RESPONDENT REP's appraisal conclusion that the value of the subject lot was \$\$\$\$\$ as of the lien date at issue. However, in his appraisal he did not make an adjustment for the lot being undevelopable due to it having no water. During the hearing he requested that the value remain as set by the County Board of Equalization at \$\$\$\$\$ to account for this issue with lack of water. However, he did not present or make an appraisal adjustment conclusion on how the value would be impacted by the lack of water.

11. RESPONDENT REP's comparables were located in the same area as the subject property and were similar to the subject, except that the comparables had water and were, therefore, developable properties. The comparables had sold for \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$.

12. The Petitioner acknowledged that other than the water issue, the comparables used by RESPONDENT REP were good comparables. He also indicated that if the subject property had water, he would not disagree with these comparables.

13. In weighing the evidence in this matter, it is clear that the subject lot would sell for more than the SUBDIVISION B dry lots of \$\$\$\$\$ or less. These are smaller, inferior lots in a different valuation area. It is also clear that if the subject lot had water, RESPONDENT REP appraisal value of \$\$\$\$\$ is reasonable. Once the Property Owner obtains water for this property the Commission would expect that value to be in this range. The problem is that neither party could find a large, otherwise developable lot in SUBDIVISION A that had no water as a comparable. Although RESPONDENT REP argues that the \$\$\$\$\$ difference between his appraisal value and the County's set value for the property of \$\$\$\$\$ takes into account the lack of water, he does not attempt to make an appraisal adjustment through paired sales or other appraisal techniques. The information from the Property Owner was that water shares were not readily available for purchase, suggesting a larger discount. Without water the property was undevelopable. The testimony indicated that the only price at which the Property Owner could have purchased a watershare was the \$\$\$\$\$, which he would have had to pay for a lot with water. He could then transfer the share to the subject.

14. Based on this evidence it appears that the cost to cure the water issue is much higher than that given account by the County in its value. Without water the use of the subject property is extremely limited and the \$\$\$\$\$ requested by the Petitioner appears reasonable.

APPLICABLE LAW

1. 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. (2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2, Utah Constitution. (Utah Code Ann. Sec. 59-2-103.)

2. “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. 59-2-102(12).)

3. (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).)

CONCLUSIONS OF LAW

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. (*X*)*V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

2. Property tax is based on the market value of the property, which is defined by statute as the amount for which property would exchange hands between a willing buyer and seller. See Utah Code Sec. 59-

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2-102. This property has no water and is not developable until a water share is purchased for the property. The evidence indicated there is not a readily available market for water shares separate from lots at any price. The Property Owner may need to purchase a lot with a watershare to obtain a share for the property. Therefore, the Proper Owner's requested value is better supported in this matter than the value set by the County Board of Equalization.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the market value of the subject property as of January 1, 2007, is \$\$\$\$\$. The County Auditor is ordered to adjust the assessment records as appropriate in compliance with this order.

DATED this _____ day of _____, 2009.

Jane Phan
Administrative Law Judge

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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

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