

08-1988
LOCALLY ASSESSED PROPERTY
TAX YEAR: 2008
SIGNED 05-18-2009
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. RURAL COUNTY BOARD OF EQUALIZATION Respondent.	INITIAL HEARING ORDER Appeal No. 08-1988 Parcel Nos. #####-1 & #####-2 Tax Type: Property Tax/Locally Assessed Tax Year: 2008 Judge: D. Dixon Pignanelli
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Presiding:
D'Arcy Dixon Pignanelli, Commissioner

Appearances:
For Petitioner: PETITIONER, *Pro Se*
For Respondent: RESPONDENT REP. 1, Assessor, RURAL County
RESPONDENT REP. 2, Commissioner and Member, RURAL
County Commission and RURAL County Board of Equalization

STATEMENT OF THE CASE

Petitioner ("Taxpayer") brings this appeal from the decision of the RURAL County Board of Equalization ("the County" or "BOE"). This matter was heard in an initial hearing on February 2, 2009 where the all parties participated by telephone. There are two parcels at issue – parcel #####-1 ("#####-1" or "manufactured home lot") at ADDRESS 1, CITY, Utah 84046 and parcel #####-2 ("#####-2" or "secondary mobile home land") at ADDRESS 2, CITY, Utah 84046.¹ The parcels are adjacent to each other.

For the January 1, 2008 lien date, the RURAL County Assessor's Office assessed #####-1 at \$\$\$\$\$ and #####-2 at \$\$\$\$\$. The Board of Equalization (BOE) reduced the value of #####-1 to \$\$\$\$\$ the value of #####-2 to \$\$\$\$\$. The County is requesting that the Commission sustain the BOE values of both parcels. The Taxpayer is requesting #####-1 be reduced to \$\$\$\$\$ and

¹ Secondary Mh (mobile home) land is the term on the RURAL County Property Valuation Notice.

#####-2 to \$\$\$\$\$. The Taxpayer is also asking #####-2 not be valued as “secondary property”, but as residential as it is adjacent to #####-1.

A status conference was held on March 24, 2009. All parties participated. The purpose of the status conference was to clarify what documents had been exchanged and what would be accepted.

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. §59-2-102 provides the following definitions for property tax purposes:

- §59-2-102(12) “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.
- §59-2-102(19)(a) Except as provided in Subsection (19)(c), "improvement" means a building, structure, fixture, fence, or other item that is permanently attached to land.
- §59-2-102(30) "Real estate" or "real property" includes: (a) the possession of, claim to, ownership of, or right to the possession of land.

Utah Code Ann. §59-2-1006 provides a person may appeal a decision of a county board of equalization (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.

Utah Code Ann. §59-2-1006(4)(b) provides in pertinent part, that 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 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.

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) and *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, 335 (Utah 1979).

PRELIMINARY ITEMS

Ten days prior to the initial hearing on February 2, 2009, the Taxpayer provided to the Commissioner and the Assessor an appraisal for both parcels. At the initial hearing on February 2, 2009, the Assessor asked if the Commissioner had received a letter from her faxed six days earlier, on January 27, 2009. The Commissioner was unable to find the faxed letter in the file, so she asked that it be refaxed². The faxed information contained the following: a cover letter from the Assessor and two pages of information. Page one had a paragraph on the RURAL Board of Equalization (BOE) hearing held on the subject properties and the result of that hearing, a paragraph explaining why a land guide was used to value one of the subject properties and the value for that subject property according to the land guide. Page two gave information in rebuttal to the Taxpayer's appraisal and also stated the Assessor's requested values. The Taxpayer objected to the receiving of the documents as all evidence was to be exchanged ten days in advance. The Assessor stated it was all information she could present verbally. Commissioner Dixon accepted the two pages of information, as it was rebuttal information and not direct evidence in the form of an appraisal. Commissioner Dixon asked the Assessor to mail the documents to the Taxpayer; she asked the Taxpayer to review the documents and if they were different from what was verbally presented in the hearing, he was to call the Tax Commission within ten days and a status conference would be set. The Taxpayer agreed.

On February 11, 2009, after the initial hearing, Commissioner Dixon received from the Assessor a packet with 14 pages of material only three of which were the original faxed letter and two pages of information faxed by the Assessor on January 27, 2009 and again on February 2, 2009. Due to receipt of the new information not disclosed at the initial hearing, Commissioner Dixon set the matter for a status conference.

At the status conference of March 24, 2009 in which both the Taxpayer and the Assessor participated, Commissioner Dixon stated she had received additional documents from the Assessor, which had not been discussed at the Initial Hearing. The Commissioner described the information. The Taxpayer stated he had received the other information from the Assessor, but not the letter and two pages accepted at the initial hearing. The Assessor apologized for misunderstanding what was to be mailed to the Taxpayer. Commissioner Dixon stated she was

² The previously faxed letter was later located. The imprint confirmed it had been faxed on January 27, 2009, but had not been placed in the file as of the hearing date.

not accepting the new information. Commissioner Dixon offered to the Taxpayer to set another telephone status conference to allow him time to receive and review the original letter and two pages of information from the Assessor. The Taxpayer asked that the Commissioner read the information on the two pages. After hearing the information read, the Taxpayer stated he preferred to proceed and was willing to accept the information on the two pages. As he was in CITY, he offered to drive to the County offices and get a copy of the document from the Assessor when the status conference was completed.

DISCUSSION

The subject properties, “#####-1” or “manufactured home lot” and “#####-2” or “secondary mobile home land”, are adjacent lots. Although adjacent, the subject parcels have different street addresses. The lots are located in a subdivision two miles east of CITY, in RURAL County, Utah. RURAL County has approximately 1,000 fulltime residents.

#####-1 is a 0.50-acre parcel improved with a manufactured home on a cement slab. The manufactured home does not have a permanent foundation or tie downs. The Taxpayer’s appraisal states it has 1,629 square feet of gross living area above grade³. The finished area above grade includes seven rooms, three of which are bedrooms, and two baths. There has been a 457.56 square foot addition, which includes living area, and two decks with one of them covered. There is also a detached two-car garage. The overall condition of the property was considered average.

#####-2 is 0.50-acre lot adjacent to #####-1. According to the Assessor, the parcel is improved with a full perimeter, six-foot tall chain link fence and a 100 square foot storage shed. The Taxpayer does not believe the improvements should be assessed.

The Taxpayer offered two appraisals dated September 5, 2008, by APPRAISER a licensed appraiser with COMPANY A from CITY 2, Utah. One appraisal is for #####-1 and one for #####-2. It appears the appraisals were done to determine a value of the subject property as of September 5, 2008, not the lien date January 1, 2008 because none of the sales were time adjusted to the lien date. The appraisals were exchanged ten days in advance of the February 2, 2009 hearing. The Taxpayer’s appraiser, APPRAISER, was not present at the hearing.

#####-1 – Manufactured Home Lot

³ The square footage on the RURAL County tax rolls is 1,596 square feet

The Taxpayer's appraiser did a cost approach and a sales approach. No income approach was done, as it is not used as a rental property. The cost approach used *Marshall & Swift* data and gave a 25 year depreciated value of \$\$\$\$\$. From the sales approach, APPRAISER determined the value of #####-1 as of September 5, 2008 to be \$\$\$\$\$. The Taxpayer is requesting the value of #####-1 be lowered from the BOE value of \$\$\$\$\$ to \$\$\$\$\$.

The appraisal had five comparable sales; however, only one sale, comparable sale number five, is prior to the lien date of January 1, 2008. As the Commission is to determine the value as of January 1, 2008 it cannot use sales after the lien date except those close enough to the lien date to corroborate a value.

The usable sale, comparable sale number five, is a manufactured home on a .63-acre lot located 1.75 miles from the subject property. By the street address it appears the sale may be inside the town of CITY. It sold on August 14, 2007 for \$\$\$\$\$. The appraiser adjusted the sale by giving downward adjustments for quality of construction, age, and condition, number of rooms, gross living area, and perimeter concrete. She gave upwards adjustments for having no garage, carport or fireplace. There was no adjustment for the lot being larger than the subject property. The net downward adjustment was \$\$\$\$\$, with a final adjusted value of \$\$\$\$\$.

There is one sale, comparable sale number three that is ten days after the lien date. The sale is 1.75 miles from the subject property, and on the same street inside the town of CITY as comparable sale number five. The appraiser gave upward adjustments for quality of construction and lack of improvements including a garage, patio, and fireplace, and downward adjustments for age. There was no adjustment for the lot being smaller than the subject property. The net upward adjustment was \$\$\$\$\$, with a final adjusted value of \$\$\$\$\$.

The Taxpayer made several arguments in the hearing to support a reduction in value. These were: (1) the manufactured home is not on a permanent foundation, (2) it is not in good condition (3) a lending institution would not lend money to purchase a manufactured home therefore it would only attract cash buyers which makes it more difficult to sell (4) there are very few sales comparables of manufactured homes on a slab, and (5) similar property inside the town of CITY would sell for more than those outside the town.

The Assessor stated that at the BOE hearing she learned it was a manufactured home on a concrete slab with no tie downs instead of a modular home on a permanent foundation. Using *Marshall & Swift* data the Assessor requested the BOE reduce the value from \$\$\$\$\$ to \$\$\$\$\$. The BOE adopted the \$\$\$\$\$ value. The Assessor is requesting the value of \$\$\$\$\$ be sustained.

To obtain a value lower than that established by the BOE, the Taxpayer has the burden of proof and must not only demonstrate both an error in the valuation set by the County BOE, but also provide an evidentiary basis to support a new value. The Commission finds the Taxpayer has provided sufficient evidence to call into question the BOE value for #####-1.

The Commission now considers the evidence. The Taxpayer submitted an appraisal that valued #####-1 at \$\$\$\$\$ as of September 5, 2008. Of the five comparable sales in the appraisal, the only usable sale is the one sale prior to the lien date with an adjusted value of \$\$\$\$\$. This adjusted sale supports a value lower than the value set by the BOE. In addition, the sale ten days past the lien date has an adjusted value of \$\$\$\$\$, which corroborates a lower value for the subject parcel. As both sales are located 1.75 miles from the subject property in what appears to be the town of CITY proper, they cannot be used to support the Taxpayer's argument that a manufactured home on a lot outside of CITY would sell for less than a manufactured home on a lot inside the town of CITY.

The Commission finds the Taxpayer has provided evidence to support a reduction in value. The Commission finds the value of #####-1 is \$\$\$\$\$. Although the Taxpayer provided an MLS listing showing that values from the 1st Quarter of 2007 to the 1st Quarter of 2008 had declined 18%, the Commission declines to determine what percentage time adjusted value per month that would be from the sale date of August 14, 2007 to the lien date.

There is one remaining issue, which can only be addressed after reviewing the evidence presented on #####-2 adjacent to #####-1. That is whether the land of #####-1 is correctly valued.

#####-2 – Secondary Mobile Home (Mh) Land

From the sales approach, the Taxpayer's appraiser determined the value of #####-2 as of September 5, 2008 to be \$\$\$\$\$. The Taxpayer is requesting the value of #####-2 be lowered from the BOE value of \$\$\$\$\$ to \$\$\$\$\$. The County is asking the Commission to sustain the BOE value of \$\$\$\$\$.

In support of sustaining the BOE value the Assessor stated that last year she updated her land guide using 18 months of sales data from July 2006 to December 2007. Using this sales data the Assessor determined, in the land guide, all vacant lots throughout the entire county would be valued the same as vacant lots in the town of CITY and that for the January 1, 2008 lien date a half acre lot would be valued at \$\$\$\$\$. She said in addition the subject lot is improved with a six-foot tall post and rail chain link fence around the entire perimeter of the lot and a small 100

square foot storage shed. She valued the chain link fence at \$\$\$\$ and the shed at \$\$\$\$\$. The lot value of \$\$\$\$ plus the improvements of \$\$\$\$, gave a total value of \$\$\$\$ for #####-2. She said at the BOE hearing the value was reduced from \$\$\$\$ to the \$\$\$\$ because she removed the value of a trailer from the real property value as she determined it was personal property.

The Taxpayer made several arguments in the hearing to support a reduced value of #####-2. These were: (1) the fence and shed should not be assessed or taxed (2) the land guide should have different values for lots in town versus outside of town, and (3) the subject lot does not have water, electricity, or sewer as the lots in town do.

The Taxpayer's appraisal states the highest and best use for the property is as a building lot. It compares the sale of three lots in and around the town of CITY; however, only one sale, comparable sale number three, is prior to the lien date of January 1, 2008. As the Commission is to determine the value as of January 1, 2008 it cannot use sales after that date except those close enough to the lien date to corroborate a value.

The usable sale, comparable sale number three, is a .54-acre lot two miles from the subject property. It sold on DATE for \$\$\$\$\$. In her rebuttal the Assessor said although she would consider comparable sale number three to be in a subdivision that is inferior to the subject subdivision, it was the most comparable because it was out in the county and in a subdivision.

To obtain a value lower than that established by the BOE, the Taxpayer has the burden of proof and must not only demonstrate both an error in the valuation set by the County BOE, but also provide an evidentiary basis to support a new value. The Commission finds the Taxpayer has provided sufficient evidence to call into question the BOE value for #####-2.

The Commission considers the evidence. The Taxpayer submitted an appraisal that stated the highest and best use of the property is as a building lot and valued #####-2 at \$\$\$\$ as of September 5, 2008. Of the three comparable sales in the appraisal, the only usable sale is the one sale prior to the lien date, comparable sale number three, which sold on DATE for \$\$\$\$\$. In terms of the 's issue regarding access to utilities, the Taxpayer's appraisal states utilities are available for the subject property and for comparable sale number three. According to the Assessor, comparable sale number three is located two miles outside the town of CITY like the subject property. Comparable sale number three does support a value lower than the \$\$\$\$ adopted by the BOE for #####-2 per the Assessor's land guide. The evidence also seems to support the Taxpayer's argument that a lot outside the town of CITY would sell for less than a lot in the town of CITY.

Finally, in terms of the Taxpayer's concern that the fence and shed should not be assessed or taxed -- improvements to property are part of an assessed value. Although the does not think the property should be assessed, he did not provide evidence to refute the values provided by the Assessor.

The Commission finds the Taxpayer has provided evidence to support a reduction in the value of the land. The Commission finds the value of the land of #####-1 to be \$\$\$\$\$. Although the Taxpayer provided an MLS listing showing that values from the 1st Quarter of 2007 to the 1st Quarter of 2008 had declined 18%, the Commission declines to determine what percentage time adjusted value per month that would be from the sale date of DATE to the lien date of January 1, 2008.

Residential Exemption of Parcel -- 21 Secondary Mobile Home Land

The Taxpayer questioned why #####-2 did not receive the residential exemption, as it is adjacent to #####-1 his manufactured home lot, which does receive the residential exemption. County Commissioner RESPONDENT REP. 2 explained if #####-1 and #####-2 were combined into one parcel, a total of one acre of that parcel would qualify for the residential exemption. The County Commissioner outlined to the Taxpayer the process to amend the county plat map to make the two parcels at issue in this appeal into one parcel. There was no testimony or evidence provided by the Taxpayer that #####-2 was used in conjunction with or as part of the primary residential home on #####-1. In addition, the Taxpayer's appraisal stated the highest and best use for #####-2 was as a separate building lot. Based on the testimony, the Commission finds #####-2 does not qualify for the residential exemption for the January 1, 2008 lien date.

Equalization

The determination by the Commission that value of the land of #####-2 is \$\$\$\$\$ now brings into question the value of the land of the Taxpayer's adjacent #####-1, which the Assessor set at \$\$\$\$\$ and the BOE sustained. The Commission finds it would create an equalization issue if the land of both parcels were not equally valued. Therefore, the Commission finds the value of the land of #####-1 is \$\$\$\$\$. The Commission has already determined the total value of #####-1 is \$\$\$\$\$. When the land value of \$\$\$\$\$ is subtracted from the total value, the remaining value of \$\$\$\$\$ is assigned to the manufactured home. It is noted \$\$\$\$\$ is within \$\$\$\$\$ of the value the Assessor set for the manufactured home.

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission finds as of the January 1, 2008 lien date the value of #####-1 is \$\$\$\$; \$\$\$\$ of that value is for the land and \$\$\$\$ is for the manufactured home. Furthermore, the Tax Commission finds the value of #####-2 is \$\$\$\$; \$\$\$\$ of that value is for the land and \$\$\$\$ is for the improvements. The County Auditor is ordered to adjust the assessment records in compliance with this order. It is so ordered. The Commission also finds #####-2 is not eligible for the residential exemption at this time.

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 _____, 2009.

D'Arcy Dixon Pignanelli
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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner