

08-2271  
LOCALLY ASSESSED PROPERTY  
SIGNED 04-27-07

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,

Petitioners,

v.

BOARD OF EQUALIZATION OF  
COUNTY, STATE OF UTAH,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 08-2271

Parcel No. #####

Tax Type: Property Tax / Locally Assessed

Tax Year: 2008

Judge: Chapman

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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, Property Owner

For Respondent: RESPONDENT REP 1, COUNTY Assessor  
RESPONDENT REP 2, COUNTY Assessor's Office

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on April 20, 2009.

At issue is the fair market value of the subject property as of the January 1, 2008 lien date. The subject property is a single-family residence located at ADDRESS in CITY, Utah. The COUNTY Board of Equalization ("County BOE") sustained the \$\$\$\$\$ value at which the subject property was originally assessed for the 2008 tax year. The property owners ask the Commission to reduce the subject's value to \$\$\$\$\$. The County asks the Commission to sustain the subject's current value of \$\$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides that “[a]ll 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. . . .” UCA §59-2-102(12) defines “fair market value,” as follows:

(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. 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.

UCA §59-2-103(2) provides that “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.” UCA 59-2-103(3) provides that “no more than one acre of land per residential unit may qualify for the residential exemption.”

UCA §59-2-1006 provides that a person may appeal a decision of a county board of equalization to the Tax Commission, pertinent parts as follows:

- (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. . . .
- (2) The auditor shall:
  - (a) file one notice with the commission;
  - (b) certify and transmit to the commission:
    - (i) the minutes of the proceedings of the county board of equalization for the matter appealed;
    - (ii) all documentary evidence received in that proceeding; and
    - (iii) a transcript of any testimony taken at that proceeding that was preserved; and
  - (c) if the appeal is from a hearing where an exemption was granted or denied, certify and transmit to the commission the written decision of the board of equalization as required by Section 59-2-1102.
- (3) In reviewing the county board's decision, the Commission may:
  - (a) admit additional evidence;
  - (b) issue orders that it considers to be just and proper; and

(c) make any correction or change in the assessment or order of the county board of equalization.

(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.

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Any party requesting a value different from the value established by the County BOE 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.

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must (1) demonstrate that the value established by the County BOE contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the value established by the County BOE to the amount proposed by the party. *Nelson v. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997), *Utah Power & Light Co. v. Utah State Tax Commission*, 530 P.2d. 332 (Utah 1979).

#### DISCUSSION

The subject property is comprised of a single-family residence and 4.37 acres of land. The home was built in or around 1988. The one-story home contains 1,821 square feet of above-grade living space and a basement that is 1,434 square feet in size (75% finished). The property also has a two-car garage. The subject property is located high on the east bench in CITY 1. The first acre of the subject property, the portion of the land on which the house is located, is zoned residential. This portion of the land is relatively flat. The remaining 3.37 of "overage" acres is zoned agricultural and is very steep. Property near the subject property has recently been developed into ¼-acre residential lots.

The subject's current value of \$\$\$\$\$ is allocated to improvements and land, as follows: 1) \$\$\$\$\$ to the improvements; 2) \$\$\$\$\$ to the 1.00-acre residential homesite; and 3) \$\$\$\$\$ to the remaining 3.37 acres of land, which equates to \$\$\$\$\$ per acre. The 45% primary residential exemption has been applied to the values attributed to the improvements and to the first acre of land, in accordance with Section 59-2-103(2), (3). The primary residential exemption has not been applied to the \$\$\$\$\$ of value attributed to the 3.37 overage acres.

Property Owners' Information. The property owners are concerned that the taxes on the subject property increased 63% between the 2007 and 2008 tax years and that they have increased more than 80% since the 2005 tax year. The subject's value increased from \$\$\$\$\$ in 2007 to \$\$\$\$\$ in 2008, an increase of 53%. The property owners do not believe that such increases should be allowed, especially when they have no intention of selling the property. Section 59-2-103(1), however, provides that property is assessed and taxes are based on "fair market value." Utah law does not limit the percentage of tax increase that results for a property from one year to the next, if the property's fair market value supports such an increase. Nor does Utah law limit the property's value from being increased to its fair market value where a property owner acquired the property for a much lower price years ago and does not plan to sell the property. Accordingly, the Commission must consider the property owners' evidence and determine if it shows that the subject's current value of \$\$\$\$\$ is not the subject's "fair market value."

The property owners used comparable sales to estimate the value of the subject property. First, they used comparable sales to determine the value of their house and first acre of land, which together are currently assessed at \$\$\$\$\$. The property owners determined that this portion of their property should have a value of \$\$\$\$\$ per square foot, based on the average square foot rate at which their comparables sold. They also determined that their home is 2,652 square feet in size. They multiplied the \$\$\$\$\$ rate by 2,652 square feet to determine a value of \$\$\$\$\$ for their home and one acre of land.

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To value the 3.37 overage acres, the property owners proffer a sale of 10.00 acres for \$\$\$\$\$, which equates to \$\$\$\$\$ per acre. Applying the \$\$\$\$\$ per acre rate to the 3.37 overage acres results in a value of \$\$\$\$\$ for the overage land. Adding the home and one-acre lot value of \$\$\$\$\$ to the overage land value of \$\$\$\$\$ results in a total value of \$\$\$\$\$ for the subject property. The property owners ask the Commission to reduce the subject's total value to this amount.

County's Information. To show a total value for the subject property, the County provides three comparable sales of homes on the County's eastside that sold for values ranging between \$\$\$\$\$ and \$\$\$\$\$. All of these properties have multiple-acre lots, ranging in size from 2.50 acres to 8.10 acres. The County also submits comparable sales to support the total assessed value of the subject's land, the assessed value of the subject's first acre and the assessed value of the subject's 3.37 overage acres. Based on this information, the County asks the Commission to sustain the County BOE decision.

Analysis. First, the Commission will address the total value of the subject property, which is currently at \$\$\$\$\$. The Commission does not find the comparable home sales that the property owners used to determine an \$\$\$\$\$ per square foot value for the subject's house and first acre of land to be convincing. The subject has approximately twice the above-grade square footage of all these comparables. In addition, there is no evidence to show whether these comparables have one-acre lots and, if they do, whether the lots have views. The subject, on the other hand, sits on a lot high on the east bench with incredible views. Furthermore, some of the properties have one-car garages or no garages at all. As a result, the Commission finds these six comparables, which sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$, to be unconvincing. Accordingly, the Commission rejects the \$\$\$\$\$ value that the property owners derived for their house and first acre of land with this methodology. As this value is the major component in the property owner's determination of a total value of \$\$\$\$\$ for the subject property, the Commission rejects this value as well.

Furthermore, the County provided three comparable sales that appear much more similar to the subject property than any of the property owners' comparables. The County's comparables sold for prices of \$\$\$\$\$, \$\$\$\$\$ and \$\$\$\$\$, respectively. The home that sold for \$\$\$\$\$ appears most similar to the subject property in style and size. The County derived an adjusted sales price of \$\$\$\$\$ for this comparable, which supports the subject's total current value of \$\$\$\$\$. In addition, the comparable that sold for \$\$\$\$\$ appears to be the next most similar property to the subject, as it has a 4.45-acre lot with a great view. The County derived an adjusted sales price of \$\$\$\$\$ for this comparable. The property owners provided three additional listings of homes in CITY 1 that are listed for sale at prices ranging from \$\$\$\$\$ to \$\$\$\$\$. However, there is insufficient information about the lots sizes, views and square footages of these properties to determine if they are comparable to the subject property. The property owners have the burden of proof to show that the subject's current value of \$\$\$\$\$ is incorrect. Their information does not convince the Commission that the current value is incorrect. Furthermore, the County's information supports the current total value of the subject property. Based on the information provided at the Initial Hearing, the Commission sustains the \$\$\$\$\$ total value for the subject property.

The second issue for the Commission to address is the value of the 3.37 acres of land that is not subject to the primary residential exemption. In most cases, all issues are resolved when the Commission determines a total value for a residential property. In this case, however, a portion of the subject property receives a 45% exemption from taxation and is taxed at 55% of its fair market value, specifically the house and first acre of land. The 3.37 overage acres, on the other hand, do not qualify for the exemption and is taxed at 100% of its fair market value. As a result, a property owner's tax liability can differ significantly, depending on how the property's total value is divided between that portion of the property that qualifies for exemption and the portion that does not. For these reasons, the Commission must consider whether the property owners have shown that the \$\$\$\$\$ value currently assessed on the subject's 3.37 overages acres is incorrect.

In 2007, the 3.37 overage acres were assessed at \$\$\$\$\$, which equates to \$\$\$\$\$ per acre. In 2008, the County assessed the acreage at \$\$\$\$\$, which equates to \$\$\$\$\$ per acre. The County provided information from its 2008 land guide showing that it assessed all land in excess of one acre in the subject's neighborhood at \$\$\$\$\$ per acre.<sup>1</sup>

The property owners contend that the 3.37 overage acres are steep and cannot be farmed or used to build a tennis court or other structures. In determining their total value for the subject property, the property owners derived a value of \$\$\$\$\$ per acre for the 3.37 overage acres based on a sale of 10 acres at \$\$\$\$\$. This comparable is a recreational lot located on a dirt road in DEVELOPMENT A. The Commission does not believe that this property is comparable to the subject property's overage acres. The property owners also proffered a list of buildable agricultural parcels in various areas of COUNTY that have sold. The lots range in size from 0.62 acres to 82.35 acres. The lots between two and five acres in size sold for prices ranging between \$\$\$\$\$ and \$\$\$\$\$ per acre. Larger lots, mostly west of CITY 2, sold for prices of \$\$\$\$\$ or less per acre. None of these comparables, however, are located on the east bench in a residential area near CITY 2.

Furthermore, the County has provided a 2005 sale of 3.94 acres of overage land near the subject that also cannot be built on. This parcel sold for \$\$\$\$\$ per acre and supports the current value of \$\$\$\$\$ per acre for the subject's overage acreage. Based on the information provided at the Initial Hearing, the Commission finds that the property owners have not shown the \$\$\$\$\$ value assessed to the subject's 3.37 overage acres to be incorrect. Accordingly, the Commission sustains this portion of the assessment as well.

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<sup>1</sup> The land guide also show that the first acre of all lots in subject's neighborhood were assessed at \$\$\$\$\$ for lots without views and \$\$\$\$\$ for lots with views. The first acre of the subject property, which has a view, was assessed at \$\$\$\$\$.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the \$\$\$\$ total value that the County BOE established for the subject property for the 2008 tax year. The Commission also sustains the \$\$\$\$ value that the County BOE established for that portion of the subject property that does not qualify for the primary residential exemption. The property owners' appeal is denied in its entirety. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files 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 taxpayer'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.

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Kerry R. Chapman  
Administrative Law Judge



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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

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